

EXHIBIT 39

Deposition of Jeffrey Eiser

A400B45
JEFF EISER MARCH 1, 2010

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 BRENDA SUE SMITH, Deceased
5 by Suetta Smith, Personal
6 Representative of the Estate
7 of Brenda Sue Smith, Deceased,

8 Plaintiff,

9 v. Case No. 2:09-cv-10648
10 Honorable David M. Lawson

11 COUNTY OF LENAWEE, SHERIFF
12 LAWRENCE RICHARDSON, JR.,
13 SGT. PAUL DYE, SGT. J. CRAIG,
14 OFF WENDY VANDERPOOL; OFF BERNICE
15 BAKER, OFF ADAM ONDROVICK; PAROLE
16 AGENT THOMAS MOORE and DR. JEFFREY
17 STICKNEY, MARY NEILL, ERIC WESTGATE,

18 Defendants.

19 DEPOSITION of JEFF EISER, taken on behalf
20 of the Defendants, pursuant to FRCVP 30, and pursuant
21 to Re-notice of Taking Deposition, Duces Tecum,
22 commencing at 11:30 a.m., on March 1, 2010, at the
23 Intelligent Office, 9435 Waterstone Boulevard,
24 Cincinnati, Ohio 45249, before Edna M. Hawkins, a
25 Court Reporter and a Notary Public in and for the
State of Ohio.

26 - - -

27 ATKINSON-BAKER, INC.
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<p>1 APPEARANCES:</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 LAW OFFICES OF KENNETH D. FINEGOOD, ESQ.</p> <p>5 BY KENNETH D. FINEGOOD, ESQ.</p> <p>6 29566 Northwestern Hwy., Ste., 120</p> <p>7 Southfield, MI 48034</p> <p>8</p> <p>9 FOR THE DEFENDANTS, LENAWEE COUNTY</p> <p>10 LAWRENCE RICHARDSON, CRAIG VANDERPOOL,</p> <p>11 BERNICE BAKER and ADAM ONDROVICK:</p> <p>12 JAMES W. BODARY, ESQ.</p> <p>13 SIEMION, HUCKABAY, BODARY, et al.</p> <p>14 One Towne Square, Suite 1400</p> <p>15 Southfield, Michigan 48076-5068</p> <p>16</p> <p>17 FOR THE DEFENDANT, DR. JEFFREY STICKNEY:</p> <p>18 LAW FIRM OF WILLINGHAM & COTE</p> <p>19 MICHAEL W. STEPHENSON, ESQ.</p> <p>20 SPECIALLY APPEARING FOR: DAVID NELSON,</p> <p>21 ESQ.</p> <p>22 333 Albert Avenue, Suite 500</p> <p>23 East Lansing, Michigan 48823</p> <p>24</p> <p>25 FOR THE DEFENDANT, THOMAS MOORE:</p> <p>MICHIGAN DEPARTMENT OF ATTORNEY GENERAL</p> <p>BY: KEVIN R. HIMEBAUGH, ESQ.</p> <p>525 W. Ottawa 4th Floor</p> <p>Lansing, Michigan 48913</p> <p>- - -</p> <p style="text-align: right;">Page 2</p>	<p>1 JEFF EISER</p> <p>2 of lawful age, a witness herein, being first duly</p> <p>3 sworn, as hereinafter certified, was examined and</p> <p>4 testified as follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. BODARY:</p> <p>7 This deposition is taking pursuant to</p> <p>8 Notice, under the Federal Rules for all</p> <p>9 uses allowed.</p> <p>10 Q. Your name is Jeff Eiser; is that</p> <p>11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. What's your business, your office</p> <p>14 address?</p> <p>15 A. My office address is 12122 Huntergreen</p> <p>16 Drive, all one word, Cincinnati, Ohio, 45211.</p> <p>17 Q. What's your date of birth?</p> <p>18 A. Is September 7th, 1958.</p> <p>19 Q. Is that your home address on</p> <p>20 Huntington Green?</p> <p>21 A. Huntergreen, yes, it is.</p> <p>22 Q. All right. You don't have an office</p> <p>23 in an office building?</p> <p>24 A. No, I do not.</p> <p>25 Q. When you bill for activities, such as</p> <p style="text-align: right;">Page 4</p>
<p>1 I N D E X</p> <p>2 WITNESS: JEFF EISER</p> <p>3 EXAMINATIONS PAGE</p> <p>4 By Mr. Bodary 4, 139</p> <p>5 By Mr. Nelson 104, 143</p> <p>6 By Mr. Finegood 115, 146</p> <p>7 By Mr. Himebaugh 146</p> <p>8</p> <p>9</p> <p>10 EXHIBITS</p> <p>11 DEFENDANTS'</p> <p>12 A List of Documents and Materials 5</p> <p>13 Reviewed</p> <p>14 F Report of Jeff Eiser 14</p> <p>15 G List of Attachments 12</p> <p>16 H Letter to Kenneth Finegood 15</p> <p>17 dated 1/5/10 w/attachment</p> <p>18 I Curriculum Vitae of Jeff Eiser 20</p> <p>19 J List of Cases where Jeff Eiser 21</p> <p>20 was retained as an expert</p> <p>21 witness in last 4 years</p> <p>22</p> <p>23 PLAINTIFF'S</p> <p>24 K Policy Number: 4.5.1.1 124</p> <p>25 - - -</p> <p style="text-align: right;">Page 3</p>	<p>1 this case, do you have a company or corporation that</p> <p>2 receives the payment?</p> <p>3 A. No, I do not; it's a sole</p> <p>4 proprietorship.</p> <p>5 Q. That's an assumed name?</p> <p>6 A. No, sir.</p> <p>7 Q. It's just your name?</p> <p>8 A. It's just my name.</p> <p>9 Q. The Notice for your deposition which</p> <p>10 has been rescheduled a few times, requested seven</p> <p>11 different items, the first of which was all materials</p> <p>12 that were provided for you to review in the case.</p> <p>13 Have you brought those with you?</p> <p>14 A. Yes, I have.</p> <p>15 (Xerographic Document, one page,</p> <p>16 headed, Appendix A, with attachment,</p> <p>17 was marked for identification Exhibit</p> <p>18 A.)</p> <p>19 Q. We received an Appendix A with a</p> <p>20 written report and I've had this marked as Exhibit</p> <p>21 letter A, of today's date, that this document, you've</p> <p>22 seen as of December 8th, 2009. Is that a complete</p> <p>23 list as of that date?</p> <p>24 A. Yes, I believe it is.</p> <p>25 (Witness reviewing document.)</p> <p>Q. All right. Have you received or</p> <p>looked at any other materials?</p> <p style="text-align: right;">Page 5</p>

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<p>1 A. I have received other materials since 2 the issuance of my report, yes. 3 Q. Have you brought those with you? 4 A. Yes, I have. 5 Q. What are they? 6 A. Copies of depositions. 7 Q. And which, which depositions? 8 A. Eric Westgate, Wendy Vanderpool, 9 Dennis Steenrod, Lawrence Richardson, Mary Neill, 10 Thomas Moore, Paul Dye, Bonita Mason. 11 Q. And did you read all of those? 12 A. I have not. I just received these this 13 week. 14 Q. So which ones did you read? 15 A. I have not reviewed these depositions 16 yet. 17 Q. Have you received any summary of any 18 of the testimony in those depositions? 19 A. No, I have not. 20 Q. You understood this was the date and 21 time set for you to give testimony under oath 22 regarding your opinions in this matter; is that true? 23 A. Yes, that's true. 24 Q. All right. Do you take the process of 25 reviewing correctional records and medical records</p> <p style="text-align: right;">Page 6</p>	<p>1 A. Yes sir. 2 Q. You also were given; weren't you, the 3 actual tape-recording of the phone call between Paul 4 Dye, listed as 20B? 5 A. Yes, sir. 6 Q. Did you listen to the tape? 7 A. Yes, I did. 8 Q. Did you notice any mistakes in the 9 transcription? 10 A. I did not. 11 Q. Did you ask for these depositions or 12 were they just sent to you by the plaintiff's lawyer? 13 A. I did not ask; they were sent to me by 14 plaintiff's lawyer. 15 Q. Had you asked for any materials that 16 you think you needed to see before you prepared your 17 report in this case in December of 2009? 18 A. I don't recall of our conversations. 19 The documents that I received were the ones that I 20 asked for and that were submitted. I don't remember 21 exactly what I -- our verbal conversations of what I 22 asked for. 23 Q. I'm not sure I needed the verbal 24 conversation. Let me do this: Is this the first 25 case you've looked at at the request of Ken Finegood?</p> <p style="text-align: right;">Page 8</p>
<p>1 seriously? 2 A. Absolutely. 3 Q. It's a weighty matter for you to be 4 critical of someone, depriving another of Civil 5 Rights; you'd agree? 6 A. Yes. 7 Q. You don't take the assignment lightly? 8 A. I do not. 9 Q. You, therefore, make a thorough, 10 careful and thorough review of the materials that can 11 touch upon your opinions; is that true? 12 A. Yes, it is. 13 Q. And you did that before you prepared 14 this report of December, 2009; is that correct? 15 A. Yes, sir. 16 Q. The Exhibit letter A, identifies 20 17 items, I think by type and admittedly, there are some 18 descriptions of particular items. Did you look at 19 every one of the 20 items before you prepared the 20 report? 21 A. Yes, I did. 22 Q. It appears that you were given a -- 23 some transcript of phone calls or a phone call 24 between Paul Dye and Jeff Stickney. This is item 25 number 5; do you see that?</p> <p style="text-align: right;">Page 7</p>	<p>1 A. Yes. 2 Q. Do you know how he found you? 3 A. Honestly, I never asked him. 4 Q. Do you advertise your service as an 5 expert in correctional cases? 6 A. I am listed on The Americans for 7 Effective Law Enforcement site and also on Juris Pro. 8 Q. Repeat the first, Americans for -- 9 A. Americans for Effective Law 10 Enforcement, AELE.org. 11 Q. And the second one? 12 A. Is Juris Pro.com. 13 Q. Juris Pro sounds like a website? 14 A. Yes, it is. 15 Q. And that lists forensic experts that 16 lawyers can contact? 17 A. Yes, it does. 18 Q. In addition to being -- First of all, 19 did you volunteer to be listed with these two 20 locations? 21 A. The ELE asked me. It is a volunteer; 22 it's a nonprofit organization. The Juris Pro is 23 something that I had heard about through attorneys 24 and upon retirement, I looked at different services 25 and selected that one as being one that I felt</p> <p style="text-align: right;">Page 9</p>

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<p>1 comfortable with.</p> <p>2 Q. And when you receive a case from Juris</p> <p>3 Pro dot com, is there some fee paid there?</p> <p>4 A. No, there is not.</p> <p>5 Q. Did you pay to be listed?</p> <p>6 A. Yes, I do.</p> <p>7 Q. So let me go back to the inquire here</p> <p>8 of materials. There are 20 items with subdivisions</p> <p>9 and descriptions here, listed in Exhibit A. Did you</p> <p>10 ask for these or were they just sent by the lawyer?</p> <p>11 A. Again, I don't remember exactly. Some</p> <p>12 things I asked about, talked about; some things were</p> <p>13 sent and I received a binder with most of the</p> <p>14 documents in there. I did ask for some, such as the</p> <p>15 policies and documents, but most of it was sent by</p> <p>16 the attorney to me.</p> <p>17 Q. Okay. Other than the policies that</p> <p>18 are listed here, under 17, is there anything else on</p> <p>19 the Exhibit that you remember you asked for,</p> <p>20 specifically, rather than the lawyer volunteering?</p> <p>21 A. I think I asked for the request for</p> <p>22 admissions, interrogatories, Complaint, those are</p> <p>23 things I would have asked for, the investigative</p> <p>24 report, something I will always ask for.</p> <p>25 Q. Well, I want to know what you asked</p> <p style="text-align: right;">Page 10</p>	<p>1 A. Yes. It's got all the attachments.</p> <p>2 Q. Okay.</p> <p>3 MR. BODARY: Go off the record.</p> <p>4 (Xerographic Document, one page,</p> <p>5 headed, "Attachments," was marked for</p> <p>6 identification Exhibit G.)</p> <p>7 Having now marked that as Exhibit G, we</p> <p>8 will need to compare this Exhibit G with those listed</p> <p>9 on Exhibit A. We can differentiate between those we</p> <p>10 received initially that the lawyer choose (sic),</p> <p>11 those on Exhibit G and those that came through later;</p> <p>12 is that a fair statement?</p> <p>13 A. Again, what I remember, what I recall</p> <p>14 is that we had a conversation about the case and Mr.</p> <p>15 Finegood asked me what would I be looking for, what</p> <p>16 would I look at and I don't remember the exact words,</p> <p>17 but I always say the same thing, so again, with all</p> <p>18 the cases that I do --</p> <p>19 Q. Is that before he sent you the ring</p> <p>20 binder?</p> <p>21 A. Yes. We talked before.</p> <p>22 Q. Okay. Well, what I'm trying to get at</p> <p>23 is this list that's marked we've marked Exhibit G is</p> <p>24 what you first received in one mailing and if we</p> <p>25 compare it with Appendix A, now marked Exhibit A,</p> <p>that the additional items', now in your Manila folder</p> <p style="text-align: right;">Page 12</p>
<p>1 for on this occasion?</p> <p>2 A. I don't recall. Generally, I would</p> <p>3 ask for that.</p> <p>4 Q. If it wasn't sent to you?</p> <p>5 A. Yes.</p> <p>6 Q. Well, did the materials come in a</p> <p>7 one-ring binder?</p> <p>8 A. Yes.</p> <p>9 Q. And that's the binder you brought here</p> <p>10 today?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And that was one mailing?</p> <p>13 A. There was one mailing and subsequent</p> <p>14 small mailings, I believe.</p> <p>15 Q. What part of the ring binder has the</p> <p>16 small mailings?</p> <p>17 A. I put `em in a folder.</p> <p>18 Q. Okay. So if we look between, if I</p> <p>19 may, you've got a ring binder and the ring binder</p> <p>20 contains materials you were initially sent; is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And the front page which I'm going to</p> <p>24 have marked as Exhibit G, is a list of what's</p> <p>25 contained in the ring binder?</p> <p style="text-align: right;">Page 11</p>	<p>1 that you received in other mailings; is that true?</p> <p>2 A. Could be, yes.</p> <p>3 Q. And did you take notes in the course</p> <p>4 of reviewing?</p> <p>5 A. What I do is I take electronic notes</p> <p>6 which then become my report. I've created a WORD</p> <p>7 documents, literally, at the beginning, with a title</p> <p>8 and that's the way I've been doing it for the last 10</p> <p>9 years and create my report out of those particular</p> <p>10 notes.</p> <p>11 Q. All right. That WORD documents been</p> <p>12 edited how many times.</p> <p>13 A. Well, every time I would go in, the</p> <p>14 final, obviously, is the end of of my report, but</p> <p>15 it's been, it's a working document; it's was issued</p> <p>16 as a report.</p> <p>17 Q. Yeah. I'm trying to get a sense, did</p> <p>18 you edit it four or five times, two times?</p> <p>19 A. Every time I would work on it.</p> <p>20 Q. And how many would that be,</p> <p>21 approximately.</p> <p>22 A. You don't want me to guess.</p> <p>23 Q. No, estimate. What's your best</p> <p>24 approximation of the number.</p> <p>25 A. Well, once you create the document,</p> <p style="text-align: right;">Page 13</p>

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<p>1 you go into it anytime you would have a though or an 2 issue or something you need to write, you put it in. 3 I worked on this case over a period of, you know, I 4 don't know; it was four-to-six or something, so -- I 5 don't keep tract to that. 6 Q. Yeah, and I didn't suggest you did. 7 I'm just trying to think, you're the one doing it, so 8 is this probably six edits, four edits, 12 edits? 9 MR. FINEGOOD: If you know. If you 10 don't know, tell him you don't know. 11 A. I don't know. 12 Q. When you save the document, do you 13 save it to a new title? 14 A. No, the same title over and over. 15 That keeps me organized; that's why I do it. It's 16 for my own personal choice and it keeps me organized 17 and everything's in one electronic file. 18 (Xerographic Document, nine pages, 19 headed, Jeff Eiser, Criminal Justice 20 Consultant and Jail Operations Expert, 21 was marked for identification Exhibit 22 F.) 23 Q. I've had marked as Exhibit F the 24 nine-page document, dated December 8, 2009, and is 25 that the report you just referred to? A. Yes, it is. Q. Have you prepared any other report?</p> <p style="text-align: right;">Page 14</p>	<p>1 Q. And how many hours was that? 2 A. Probably an hour and a half. 3 Q. And did you meet with counsel? 4 A. Yes, I did. 5 Q. And how long was that? 6 A. We met for probably an hour this 7 morning. 8 Q. Are you billing for the meeting? 9 A. I haven't thought about that yet. 10 Q. Well, what's your routine if you have 11 a meeting with lawyer -- 12 A. Generally, yes. 13 Q. -- on the day of the deposition, you 14 bill that lawyer? 15 A. Yes. 16 Q. And what's your hourly rate for 17 meetings? 18 A. My hourly for everything is a 150 an 19 hour. 20 Q. Are you billing for the 1.5 hours of 21 preparation or is that part of your deposition 22 charge? 23 A. Again, that took place yesterday, so I 24 will assume I will be billing for that. 25 Q. Um-hum. Looks like the items on the</p> <p style="text-align: right;">Page 16</p>
<p>1 A. No, sir. 2 Q. Do you have another WORD document in 3 process? 4 A. I have not started another one. 5 Q. Okay. You mentioned it was over a 6 six-week period. What did you charge for the review 7 and preparation of the report? 8 A. I can get my documents out -- 9 Q. Did you bring a billing statement with 10 you? 11 A. Yes, I did. 12 Q. Per your subpoena. 13 A. Right. 14 (Xerographic Document, four pages, a 15 letter, dated 1/5/10 with attachment, 16 was marked for identification Exhibit 17 H.) 18 Q. And I'm going to hand you back what's 19 been marked as Exhibit H, of today's date, consisting 20 of four pages. Does that constitute all the billings 21 you've produced up to the present day? 22 A. On this matter, yes, sir. 23 Q. Okay. Now, did you spend additional 24 time beyond what is billed there to prepare for this 25 deposition? A. I did. Last evening -- Actually, yesterday, I reviewed the materials once again.</p> <p style="text-align: right;">Page 15</p>	<p>1 notice, in addition to the materials -- Well, let me 2 pause there. Between Exhibit A which was Addendum A 3 to your report and the depositions that you've just 4 listed for us, do we have all of the materials that 5 were given to you to review that touch upon the facts 6 of this case? 7 A. You didn't mention the transcripts. 8 These two document I received separately. 9 Q. But in fact, the transcript of the 10 phone call was, in fact, listed as Exhibit 5 on -- 11 I'm sorry -- listed number 5 on Exhibit A. 12 A. Correct. I'm sorry. It wasn't in the 13 original set of documents. I just answered your 14 question. 15 Q. Yeah. So what I was trying to get to 16 is this, sir, if I may: I appreciate you for 17 bringing out the transcript of the phone call between 18 Paul Dye and Dr. Stickney and between Mary Neill and 19 Dr. Stickney, but actually, those were already 20 identified in Exhibit A; correct, cause you had both 21 of those before you prepared your report? 22 A. Yes. 23 Q. My question was trying to make sure 24 that there is no other document that you've looked at 25 that relates to the underlying facts and policies and</p> <p style="text-align: right;">Page 17</p>

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<p>1 procedures that we haven't had identified by your</p> <p>2 reading the names of the depositions that you,</p> <p>3 admittedly, have not read and all those items, 20</p> <p>4 items listed in Exhibit A.</p> <p>5 A. I did also receive expert reports</p> <p>6 Q. One of those reports -- Well, strike</p> <p>7 that. Are those -- Did they include the expert</p> <p>8 report of Nurse Wilson (sic)?</p> <p>9 A. That's in the notebook.</p> <p>10 Q. That's in your binder?</p> <p>11 A. Yes, in the binder.</p> <p>12 Q. So you're saying that -- What date did</p> <p>13 you receive these other reports?</p> <p>14 MR. FINEGOOD: For the record, it's</p> <p>15 Nurse Wilton.</p> <p>16 MR. BODARY: I'm sorry?</p> <p>17 MR. FINEGOOD: You said Wilson, I</p> <p>18 believe.</p> <p>19 MR. BODARY: And it's Wilmer?</p> <p>20 MR. FINEGOOD: Wilton.</p> <p>21 MR. BODARY: Wilton. Excuse me.</p> <p>22 A. The correspondence is dated January</p> <p>23 29th, 2010, so I received that subsequent to that</p> <p>24 date.</p> <p>25 Q. Did you read `em?</p> <p style="text-align: right;">Page 18</p>	<p>1 Q. Curriculum Vitae. We were provided a</p> <p>2 Curriculum Vitae.</p> <p>3 A. I did bring an updated one.</p> <p>4 Q. Are there any changes, if you know.</p> <p>5 A. I think added to -- On the previous</p> <p>6 one, I did not include the fact that I'm in the</p> <p>7 process of completing my Master's degree in</p> <p>8 education.</p> <p>9 MR. BODARY: We'll mark that as</p> <p>10 Exhibit I.</p> <p>11 (Xerographic Document, three pages,</p> <p>12 Curriculum Vitae of Jeff Eiser, was</p> <p>13 marked for identification Exhibit I.)</p> <p>14 Q. The next item on the Duces Tecum was</p> <p>15 for a list of any cases which you've acted as an</p> <p>16 expert in a trial or deposition. Is this list</p> <p>17 updated from that which was attached?</p> <p>18 A. Yes.</p> <p>19 Q. There are two new cases that you've</p> <p>20 reviewed; is that correct?</p> <p>21 A. I believe there was -- I had to</p> <p>22 compare it to the other list because I try to keep a</p> <p>23 current --</p> <p>24 Q. I'm going to show you what I have</p> <p>25 marked as Exhibit B which was the list initially</p> <p>produced and you have two cases now listed above the</p> <p style="text-align: right;">Page 20</p>
<p>1 A. Yes, I have.</p> <p>2 Q. Did you make any notes?</p> <p>3 A. No, sir.</p> <p>4 Q. The top enclosures appear to be</p> <p>5 experts of the defendant, but the last one seems to</p> <p>6 be the report of Joe Goldenson, M.D.?</p> <p>7 A. Correct.</p> <p>8 Q. Is that the first time you saw this</p> <p>9 report?</p> <p>10 A. Yes, sir.</p> <p>11 Q. All right. The notice also asked you</p> <p>12 to bring citations of books, journals or papers that</p> <p>13 you used as research in this matter.</p> <p>14 A. I brought my two manuals for the</p> <p>15 National Health Standards and also the National</p> <p>16 Corrections Association, my working books.</p> <p>17 Q. Are those the ACI and the NCCHC?</p> <p>18 A. Yes, they are. They were in a force</p> <p>19 at the time of the incident.</p> <p>20 Q. The third was any written notes. You</p> <p>21 don't have any; everything was done electronically?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Next was written opinions and that is</p> <p>24 Exhibit F; is that correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 19</p>	<p>1 Brenda Smith case; don't you?</p> <p>2 A. Yes.</p> <p>3 Q. So if we can take this and we'll mark</p> <p>4 this as Exhibit J. That is a list of all cases --</p> <p>5 (Xerographic Document, three pages,</p> <p>6 headed, "List of Cases Where Jeff</p> <p>7 Eiser Was Retained as an Expert</p> <p>8 Witness in Last 4 Years," was marked</p> <p>9 for identification Exhibit J.)</p> <p>10 Exhibit J, that is a list all the cases in which</p> <p>11 you've been retained as an expert in the last four</p> <p>12 years?</p> <p>13 A. Yes, sir.</p> <p>14 Q. It's 29 cases?</p> <p>15 A. It's 30.</p> <p>16 Q. This list does not designate in which</p> <p>17 cases you've given depositions and which you have</p> <p>18 not; does it?</p> <p>19 A. No.</p> <p>20 Q. It doesn't designate in which you've</p> <p>21 given trial testimony?</p> <p>22 A. No, it does not.</p> <p>23 Q. Could you put a mark next to all the</p> <p>24 cases in which you've given trial testimony or a star</p> <p>25 if you would.</p> <p>A. There's only been, I believe, two</p> <p>cases that have ever gone to trial.</p> <p style="text-align: right;">Page 21</p>

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<p>1 Q. Put stars next to them, if you would.</p> <p>2 A. It's, actually, been a while -- or,</p> <p>3 actually, this is for the last four years.</p> <p>4 Q. And the appearance was before that?</p> <p>5 A. Yes. I've been working as an expert</p> <p>6 since 1994.</p> <p>7 Q. So the two cases you testified in are</p> <p>8 not on this list; is that correct?</p> <p>9 A. The one -- It must have been more than</p> <p>10 four year ago.</p> <p>11 Q. I'm sorry?</p> <p>12 A. It must have been more than four years</p> <p>13 ago.</p> <p>14 Q. All right. Are you able to circle all</p> <p>15 the cases in which you gave depositions?</p> <p>16 A. I can attempt. Most of them.</p> <p>17 Q. I tell you what, I'm going to have you</p> <p>18 do that exercise when we're done with the deposition,</p> <p>19 so we can use our time with the court reporter more</p> <p>20 effectively.</p> <p>21 Have you ever, previously reviewed a</p> <p>22 case involving a Michigan jail or lockup?</p> <p>23 A. Michigan, no, sir; I don't believe so.</p> <p>24 Q. Have you ever inspected or surveyed a</p> <p>25 jail in Michigan?</p> <p style="text-align: right;">Page 22</p>	<p>1 Q. And the Bureau of Adult Detention has</p> <p>2 a list of all the jails?</p> <p>3 A. Yes, it does.</p> <p>4 Q. How many of the jails in Ohio are</p> <p>5 accredited by NCCH (sic)?</p> <p>6 A. I only know -- I only know of the one</p> <p>7 that I was administrator of was accredited by NCCHC.</p> <p>8 I know of the jail in Licking County.</p> <p>9 Q. Lickum?</p> <p>10 A. Licking.</p> <p>11 Q. Licking.</p> <p>12 A. Licking County. Again, I'm not sure</p> <p>13 of the other ones.</p> <p>14 Q. What you're giving me is Hamilton</p> <p>15 County is one you know was NCCH accredited and the</p> <p>16 other you know of is Licking County?</p> <p>17 A. There are other jails, but I can't</p> <p>18 recall which ones they are.</p> <p>19 Q. The number of certified jails is under</p> <p>20 10 percent by NCCH in the state of Ohio; isn't it?</p> <p>21 A. I only know -- I've never looked at</p> <p>22 that information up.</p> <p>23 Q. Have you looked at jails in Ohio that</p> <p>24 aren't NCCH certified?</p> <p>25 A. Have I looked at jails?</p> <p style="text-align: right;">Page 24</p>
<p>1 A. No, I have not.</p> <p>2 Q. You've never been to the old Lenawee</p> <p>3 County Jail; have you?</p> <p>4 A. No, I have not.</p> <p>5 Q. You've never been to the new Lenawee</p> <p>6 County Jail?</p> <p>7 A. No, I have not.</p> <p>8 Q. How many jails and local lockups are</p> <p>9 there in the state of Ohio?</p> <p>10 A. There are 88 counties in which 80-- I</p> <p>11 think of the 85 now have, actually, 84, 85 actually,</p> <p>12 have jails.</p> <p>13 Q. Lockups?</p> <p>14 A. Except for the big counties of</p> <p>15 Cuyahoga, I believe, is the only one that has</p> <p>16 multiple lockups, Cleveland. Most of the counties</p> <p>17 don't have lockups anywhere in Ohio.</p> <p>18 Q. And how many are there in Cuyahoga?</p> <p>19 A. At last count, I think there was eight</p> <p>20 or 10 different municipal jails in that county.</p> <p>21 Q. What is the best source for statistics</p> <p>22 on the number of county jails and lockups?</p> <p>23 A. There is an agency in Ohio called the</p> <p>24 Bureau of Adult Detention which is in charge of the</p> <p>25 inspection and supervision of all the jails in Ohio.</p> <p style="text-align: right;">Page 23</p>	<p>1 Q. Yeah.</p> <p>2 A. In what context?</p> <p>3 Q. Well, let me understand, first of all,</p> <p>4 you've looked at lawsuits, involving county jails,</p> <p>5 but have you also inspected jails?</p> <p>6 A. I have toured and done my own</p> <p>7 evaluation of jails, analysis of jails, yes.</p> <p>8 Q. All right. Have you toured and</p> <p>9 evaluated jails in Ohio that weren't NCCH accredited?</p> <p>10 A. Yes, I have.</p> <p>11 Q. How many?</p> <p>12 A. I believe Butler County. I'm sure</p> <p>13 they're -- I've never asked `em, so I'm, again --</p> <p>14 Q. Have you looked at them -- Aren't you</p> <p>15 looking at policies?</p> <p>16 A. Depending on the issue, yes.</p> <p>17 Q. So can you tell me how many you have</p> <p>18 looked at that weren't NCCH accredited?</p> <p>19 A. I've never -- I've looked at numerous</p> <p>20 jails. I can't consciously say how many because I</p> <p>21 never made that a conscious thought to do that.</p> <p>22 Q. Was Hamilton County always NCCH</p> <p>23 accredited?</p> <p>24 A. We have been NCCH accredited since the</p> <p>25 mid-1980's, I think, when we first opened up the</p> <p style="text-align: right;">Page 25</p>

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<p>1 Justice Center.</p> <p>2 Q. And I understood -- First of all,</p> <p>3 what's the size of Lenawee County Jail?</p> <p>4 A. My mind just went blank. It's in the</p> <p>5 hundreds of inmates.</p> <p>6 Q. Are you saying you did know and you</p> <p>7 forgot?</p> <p>8 A. I'm guessing around 300 inmates.</p> <p>9 Q. And Hamilton County, how many inmates</p> <p>10 did it have?</p> <p>11 A. We have four different facilities.</p> <p>12 Q. The total licensed number of</p> <p>13 correctional beds in the four facilities?</p> <p>14 A. We had an average population of about</p> <p>15 2300.</p> <p>16 Q. Two thousand three hundred?</p> <p>17 A. Yes.</p> <p>18 Q. The annual budget at Hamilton is</p> <p>19 \$40,000,000?</p> <p>20 A. Correct. The last annual budget was</p> <p>21 approximately \$40,000,000.</p> <p>22 Q. And what of that budget was spent on</p> <p>23 inmate health care?</p> <p>24 A. Operationally, I believe somewhere</p> <p>25 around 9,000,000.</p> <p style="text-align: right;">Page 26</p>	<p>1 treatment center for those going through alcohol and</p> <p>2 drug treatment. The fourth was called the Turning</p> <p>3 Point facility which was 60 beds.</p> <p>4 Q. I'm sorry. Could you go back. Was it</p> <p>5 called Reading Road?</p> <p>6 A. Reading Road. It's spelled like</p> <p>7 reading, but it's pronounced redding.</p> <p>8 Q. Okay. Go ahead.</p> <p>9 A. And it's called the Turning Point</p> <p>10 facility which was a 60-bed -- Again, extensive</p> <p>11 treatment program for those undergoing court-ordered</p> <p>12 treatment for drug and alcohol or domestic violence.</p> <p>13 Q. So two of the four facilities seem to</p> <p>14 have been dedicated to the substance individuals; is</p> <p>15 that fair to say?</p> <p>16 A. We used two of the facilities to house</p> <p>17 people that are going through treatment, correct.</p> <p>18 Q. So you mentioned that the Justice</p> <p>19 Center was an intake facility, but in the intake</p> <p>20 facility do they transfer those inmates with alcohol</p> <p>21 -- that need alcohol and drug treatment over the</p> <p>22 Reading or the Turning Point?</p> <p>23 A. No. What happens is they -- each</p> <p>24 inmate will come in and be classified. Those that</p> <p>25 are court-ordered, after they've gone through the</p> <p style="text-align: right;">Page 28</p>
<p>1 Q. Describe briefly for me, by size, and</p> <p>2 facility by type if they differentiate the four</p> <p>3 facilities in Hamilton County?</p> <p>4 A. The first, the largest of the</p> <p>5 facilities is -- is called the Hamilton County</p> <p>6 Justice Center. It had a capacity of 1280 beds. It</p> <p>7 was the intake center, a full-service jail. It</p> <p>8 housed the medical units, juvenile, maximum security</p> <p>9 cells. The second facility was the Queensgate</p> <p>10 Correctional Facility.</p> <p>11 Q. Is Queensgate, it's like location?</p> <p>12 A. Queensgate is on Linn Street, it was.</p> <p>13 Q. All right.</p> <p>14 A. One of the last things I did before I</p> <p>15 retired was we closed that facility due to budget.</p> <p>16 It was 822 beds.</p> <p>17 Q. They had a medical clinic?</p> <p>18 A. They have a -- They have on-site</p> <p>19 medical care, yes, an office.</p> <p>20 Q. It's not a medical clinic; it's an</p> <p>21 office for what, a nurse?</p> <p>22 A. A nurse 24 hours a day, yes.</p> <p>23 Q. All right, go ahead.</p> <p>24 A. We have -- The third facility is</p> <p>25 called the Reading Road facility. It's 150-bed</p> <p style="text-align: right;">Page 27</p>	<p>1 court process, they may be ordered to go through a</p> <p>2 DUI or an extensive alcohol treatment program would</p> <p>3 be housed at those facilities.</p> <p>4 Q. Okay. At the Justice Center is there</p> <p>5 a infirmary?</p> <p>6 A. Yes, there is.</p> <p>7 Q. How many beds?</p> <p>8 A. I believe we had six beds for females</p> <p>9 and around 28, 30 beds for males.</p> <p>10 Q. And how was the infirmary staffed?</p> <p>11 A. It was staffed by security --</p> <p>12 Q. Professionals, medical professionals.</p> <p>13 A. Around-the-clock an RN on each shift,</p> <p>14 along with LPNs to assist.</p> <p>15 Q. Is there a physician presence in the</p> <p>16 infirmary?</p> <p>17 A. Monday through Friday the physician</p> <p>18 was onsite at least, I believe, four hours a day.</p> <p>19 Q. Did that physician spend time at any</p> <p>20 of the other four facilities?</p> <p>21 A. He would visit Queensgate when it was</p> <p>22 open and do sick call at Queensgate, in the</p> <p>23 afternoons.</p> <p>24 Q. What's the, if you know, the</p> <p>25 population of Hamilton County?</p> <p style="text-align: right;">Page 29</p>

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<p>1 A. The last census Hamilton County -- I'm 2 guessing again -- 3 Q. You can make an estimate. 4 A. -- it was around 450,000 people. 5 Q. Have you ever reviewed a case or done 6 a tour or an inspection of the Kent County Jail? 7 A. The Kenton County Jail? 8 Q. The Kent County Jail, of Kent County 9 Michigan. 10 A. No, sir. 11 Q. Or the Ingham County Jail? 12 A. No, sir. 13 Q. In Lansing, Michigan? Do you know 14 whether either of those is certified by any national 15 association? 16 A. I have no knowledge of that. 17 Q. Do you know when the NCCH was first 18 founded, what year? 19 A. I could look in the manual. 20 Q. Do you know where its headquarters is? 21 A. Again, I could look in the manual. 22 I've never -- 23 Q. Do you know off-hand? I'm asking you 24 if you know off-hand? 25 A. No.</p> <p style="text-align: right;">Page 30</p>	<p>1 know? 2 A. It was in the thousands of dollars. 3 Q. Ten thousand? 4 A. ACA is probably 10,000. NCC (sic) 5 wasn't as expensive. I can't remember the exact 6 cost. 7 Q. Okay. Is, first, the ACC also 8 accredits jails? 9 A. ACA? 10 Q. ACA; I'm sorry. 11 A. Yes, it does. 12 Q. And do you know how many they have 13 accredited in the state of Ohio? 14 A. I have no knowledge. 15 Q. Do you know how many they have 16 accredited in the United States? 17 A. I have no knowledge. 18 Q. The ACA has mandatory standards; is 19 that true? 20 A. The ACA has standards they categorize 21 as mandatory, yes. 22 Q. What do they call the other standards? 23 Are they called non-mandatory or elective? 24 A. Recommended, I believe. 25 Q. Okay. And in order to be accredited</p> <p style="text-align: right;">Page 32</p>
<p>1 Q. You've never been to the NCCH 2 headquarters? 3 A. No. They always came to us. 4 Q. All right. They are a private, 5 nonprofit organization, is that what you understand? 6 A. They're a national commission, yes. 7 Q. All right. It has the word, 8 commission, in it, but it was not commissioned by any 9 statute or legislature; was it? 10 A. Again, I have no personal knowledge of 11 that. 12 Q. All right. There was no regulation of 13 any state or in the federal government that created 14 that commission, the national commission? 15 A. Again, I have no personal knowledge of 16 that, no. 17 Q. As far as you know, it's a private 18 organization that organized itself and called itself 19 the national commission? 20 A. Again, I have no personal knowledge of 21 those facts. 22 Q. All right. What does it cost to be 23 accredited by the NCCH? 24 A. I don't recall the actual cost. 25 Q. What's your estimate of it; do you</p> <p style="text-align: right;">Page 31</p>	<p>1 by ACA, what percentage of the recommended standards 2 to you have to meet? 3 A. Ninety percent. 4 Q. NCCH has essential, but not mandatory; 5 is that correct? 6 A. That's what they use, the word, 7 essential, yes. 8 Q. And is there, in the state of Ohio, a 9 requirement that any jail be certified or accredited? 10 A. There's no requirement; no, sir. 11 Q. Do you know of any state that requires 12 accreditation? 13 A. No, I don't. 14 Q. Do you know how many states this 15 national commission actually accredits jails in? 16 A. Again, I've never asked that question 17 or -- 18 Q. You don't know if it's 50 states or 45 19 states or how many states? 20 A. I have no knowledge of that. 21 Q. In addition to the ACA and the NCCHC, 22 there are other entities that have standards; are 23 there not for correctional medicine -- or 24 correctional institutions? 25 A. There are some health care</p> <p style="text-align: right;">Page 33</p>

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<p>1 organizations, yes, I believe.</p> <p>2 Q. And what are they?</p> <p>3 A. Again, I don't deal personally with</p> <p>4 those since I'm not a medical person. I'm a jail</p> <p>5 operations person.</p> <p>6 Q. You ever see the standards from other</p> <p>7 national organizations? You said they were health</p> <p>8 organizations?</p> <p>9 A. Medical and health organizations, yes.</p> <p>10 Q. Well, do you know of the American Jail</p> <p>11 Association?</p> <p>12 A. Yes.</p> <p>13 Q. Is that a membership organization?</p> <p>14 A. Yes, I'm a member.</p> <p>15 Q. Okay. It does not accredit jails?</p> <p>16 A. No.</p> <p>17 Q. Does it have standards?</p> <p>18 A. It has standards for individual</p> <p>19 employees; it has standards for administrative,</p> <p>20 certified jail managers, certified corrections</p> <p>21 officers.</p> <p>22 Q. Is there any requirement in the state</p> <p>23 of Ohio for a certification of correctional officers?</p> <p>24 A. Ohio does have a certification</p> <p>25 requirement under the Ohio Administrative Code.</p> <p style="text-align: right;">Page 34</p>	<p>1 operations person.</p> <p>2 Q. I represent in this lawsuit eight</p> <p>3 individuals and the County of Lenawee and I am going</p> <p>4 to ask the questions relative to two types of</p> <p>5 criticisms you've raised or you've stated in this</p> <p>6 report of December 8, 2009. You, in fact, offered an</p> <p>7 opinion, didn't you, that correctional staff was</p> <p>8 deliberately indifferent in its handling of the</p> <p>9 Brenda Smith case; is that your opinion?</p> <p>10 A. Yes, I did.</p> <p>11 Q. And by, "staff," you meant</p> <p>12 correctional officers and sergeants; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. So why don't you tell me, from your</p> <p>15 careful and thorough review of the records in this</p> <p>16 case, what it was that Mary Neill did or didn't do</p> <p>17 that you claim was deliberately indifferent.</p> <p>18 MR. HIMBAUGH: Let me just object for</p> <p>19 the record of him giving -- expressing</p> <p>20 opinions at all on deliberate indifference,</p> <p>21 but go ahead and you can answer to that --</p> <p>22 MR. BODARY: Yeah. I reserve on that</p> <p>23 objection, too, but that can be addressed</p> <p>24 elsewhere. My asking the question doesn't</p> <p>25 make it objectionable.</p> <p style="text-align: right;">Page 36</p>
<p>1 Q. Does Michigan</p> <p>2 A. I'm not, I'm not aware. I'm not an</p> <p>3 expert on Michigan law.</p> <p>4 Q. And as you sit here reviewing this</p> <p>5 case in Michigan, you don't know whether the State</p> <p>6 requires certification for correctional officers?</p> <p>7 A. I did not inquire.</p> <p>8 Q. Is there a -- any administrative rules</p> <p>9 in the state of Michigan for jails or lockups?</p> <p>10 A. I believe, in conversation, yes there</p> <p>11 are administrative rules.</p> <p>12 Q. In conversation with whom?</p> <p>13 A. With counsel.</p> <p>14 Q. And did you ask for those?</p> <p>15 A. No, I did not.</p> <p>16 Q. Okay. Are you familiar with the ASA</p> <p>17 -- I'm sorry -- the ASA, American Security</p> <p>18 Association?</p> <p>19 A. I've never heard of them in my 29</p> <p>20 years of corrections.</p> <p>21 Q. Yeah, you've heard of it. Do you know</p> <p>22 if public health also accredits come facilities?</p> <p>23 A. Again, that would be a medical --</p> <p>24 Q. Accreditation?</p> <p>25 A. -- accreditation, not -- I'm a</p> <p style="text-align: right;">Page 35</p>	<p>1 MR. FINEGOOD: You're reserving an</p> <p>2 objection to your own question. I've never</p> <p>3 heard of that before.</p> <p>4 MR. HIMBAUGH: Well, I object.</p> <p>5 MR. BODARY: Actually, it is. It's</p> <p>6 allowed. My asking the question doesn't</p> <p>7 waive what (sic), otherwise, otherwise it</p> <p>8 is an objectable opinion.</p> <p>9 MR. FINEGOOD: So you're objecting to</p> <p>10 your own question.</p> <p>11 MR. BODARY: Yeah.</p> <p>12 MR. FINEGOOD: Okay. The record</p> <p>13 should reflect.</p> <p>14 MR. BODARY: Yeah.</p> <p>15 A. I'm trying to get all the people in</p> <p>16 the situation so when I alluded to and included the</p> <p>17 staff, my intent in this particular situation as a</p> <p>18 condition of a particular inmate deteriorized (sic)</p> <p>19 -- or deteriorated throughout the evening. There was</p> <p>20 no update or no action taken based upon the new</p> <p>21 information as the condition deteriorated. I believe</p> <p>22 I mentioned Mary Neill, specifically. She did</p> <p>23 contact the doctor.</p> <p>24 Q. She did contact the doctor?</p> <p>25 A. She contacted Dr. Stickney on 4/27/09</p> <p style="text-align: right;">Page 37</p>

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<p>1 and I described in detail, but after that, over the 2 next two days, she failed to follow up on anything as 3 the individual inmate deteriorated. That's the only 4 comment I have.</p> <p>5 Q. Well, in fact, you offered the 6 opinion, if you look at page 2 -- I'm in the bottom 7 paragraph, fourth line down, that jail staff observed 8 Ms. Smith begin to exhibit obvious signs of alcohol 9 withdrawal on the afternoon of April 29, 2007; is 10 that your opinion?</p> <p>11 A. That the overview of the case, a 12 statement of the facts as I understood `em.</p> <p>13 Q. Now, when was Mary Neill there to see 14 anything on the afternoon of April 29th?</p> <p>15 A. Okay. I'm not sure if Mary Neill was 16 working on that particular day.</p> <p>17 Q. What is it if she was working that she 18 saw?</p> <p>19 A. Again, I'm talking about the 20 corrections staff that was supervising the inmate on 21 that day. I don't recall exactly who those 22 individuals were.</p> <p>23 Q. Yeah. I want you to assume Mary Neill 24 was there that afternoon. What evidence do you have 25 that there was a deterioration that she observed?</p> <p style="text-align: right;">Page 38</p>	<p>1 deteriorated over the next two days." So you did, in 2 fact -- You were, in fact, critical of her?</p> <p>3 A. Well, based upon my review, I received 4 no other information that she actually took any other 5 action as a supervisor, so --</p> <p>6 Q. But you said, "over two days." In 7 fact, your opinion is that alcohol withdrawal 8 exhibited signs, obvious signs on the afternoon of 9 the 29th. That's on the second page of your letter; 10 isn't it? She began to exhibit obvious signs of 11 alcohol withdrawal on the afternoon of the 29th?</p> <p>12 A. Correct, she got worse. When she came 13 in, Mary Neill had enough information to know that 14 she was an alcoholic. She had some issues in the 15 intake process. She called for assistance, called 16 for some direction. She continued to deteriorate 17 then over the next two days.</p> <p>18 Q. Well, but you can't tell me which 19 deterioration Sgt. Neill saw on the afternoon of the 20 29th; can you?</p> <p>21 A. I have no information.</p> <p>22 Q. In fact, in the discussion of your 23 page 3, third paragraph, middle, you say, "The 24 ignoring or failing to take corrective action for an 25 inmate's serious medical condition would amount to</p> <p style="text-align: right;">Page 40</p>
<p>1 A. Again, the behaviors illustrated by 2 the particular inmate in the cell was so obvious to 3 me, the layperson, or any layperson, that her 4 condition was deteriorating. Their responsibility 5 was to observe her condition and her being a 6 supervisor, I'm assuming that she would also be 7 involved in that process. You're saying if she 8 worked that day; I'm not sure if Mary Neill was 9 working on the --</p> <p>10 Q. So when you wrote this report after a 11 careful and thorough review, you gave the opinion 12 that she was deliberately indifferent even when you 13 didn't know whether she worked that day; is that a 14 fair statement?</p> <p>15 A. Again, I didn't say her, specifically, 16 in my opinions. I stated the staff that was involved 17 with her supervision in the cell as her condition 18 deteriorated, the staff that saw her.</p> <p>19 Q. So you told me you didn't reference 20 her particularly. Why don't you look at page 6, on 21 November 2, "Did defendants act in a culpable state 22 of mind?" Third paragraph, "Sgt. Mary Neal contacted 23 Dr. Jeffrey Stickney on April 27, '07 and described 24 in detail the medical condition and behavior of Mrs. 25 Smith, but she failed to follow-up as her condition</p> <p style="text-align: right;">Page 39</p>	<p>1 'deliberate indifference' to the health and safety of 2 the inmate." Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. So ignoring or failing to take 5 corrective action; is that right?</p> <p>6 A. Correct.</p> <p>7 Q. When Mary Neill called Dr. Stickney 8 was she ignoring the inmate?</p> <p>9 A. At that time, no.</p> <p>10 Q. Did she fail to take corrective 11 action?</p> <p>12 A. She called the doctor, but my comment 13 was that you alluded to was that I could find nothing 14 in the record that she followed up after that point.</p> <p>15 Q. Right. And you haven't read the 16 depositions of Wendy Vanderpool, the intake officer 17 or Intake Officer Adam Ondrovick, as to when this 18 patient got worse?</p> <p>19 A. Again, no, I have not.</p> <p>20 Q. All right. You're not a medical 21 doctor --</p> <p>22 A. No, I'm not.</p> <p>23 Q. Have you ever taken classes in regard 24 to alcohol withdrawal syndromes or delirium tremens?</p> <p>25 A. I have received training over the</p> <p style="text-align: right;">Page 41</p>

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<p>1 years numerous times on those conditions.</p> <p>2 Q. Now, from that training, do you</p> <p>3 understand that a deterioration to DT's could happen</p> <p>4 suddenly?</p> <p>5 A. It could happen -- It depends on the</p> <p>6 individual patient.</p> <p>7 Q. Changes from patient-to-patient?</p> <p>8 A. Yes, it does.</p> <p>9 Q. All right. Hallucinations in the</p> <p>10 spectrum of withdrawal symptoms into delirium</p> <p>11 tremens, hallucinations can be transient?</p> <p>12 A. Again, it changes from</p> <p>13 patient-to-patient.</p> <p>14 Q. Yeah, but once hallucinations occur,</p> <p>15 they don't have to continue; they can be</p> <p>16 intermittent?</p> <p>17 A. Again, I'm not an expert on that, but</p> <p>18 based upon the training --</p> <p>19 Q. So you don't know whether or not --</p> <p>20 Sorry. I interrupted you. Based upon the -- Go</p> <p>21 ahead.</p> <p>22 A. What we're trained to look for is what</p> <p>23 the individuals can suffer when they're going through</p> <p>24 alcoholic or chemical withdrawal.</p> <p>25 Q. All right. Now, did Mary Neill write</p> <p style="text-align: right;">Page 42</p>	<p>1 or not. I don't recall that.</p> <p>2 Q. Well, wouldn't it be important for you</p> <p>3 to know if Mary Neill was ignoring an inmate whether</p> <p>4 she actually gave medicine at 10:00 a.m., in the</p> <p>5 morning on the 28th and 10:00 a.m., on the morning,</p> <p>6 on the 29th?</p> <p>7 A. Again, I said, I don't recall.</p> <p>8 Q. Right. Let's pretend she did. If she</p> <p>9 gave the medication as prescribed, those two</p> <p>10 mornings, is that ignoring the patient or failing to</p> <p>11 take action?</p> <p>12 A. That's taking some action, yes.</p> <p>13 MR. FINEGOOD: What about not giving</p> <p>14 it to her on the night of the -- that she</p> <p>15 was booked; why don't you ask him that</p> <p>16 question.</p> <p>17 Q. Well, did you check to see if the</p> <p>18 patient -- if the inmate got Librium on the night</p> <p>19 she as booked?</p> <p>20 A. Did I check?</p> <p>21 Q. Yeah.</p> <p>22 A. There was some indication in the</p> <p>23 record that she did not receive medication during her</p> <p>24 time of incarceration --</p> <p>25 Q. I'm not -- Your counsel wanted to</p> <p style="text-align: right;">Page 44</p>
<p>1 pass-on reports on this inmate at the end of every</p> <p>2 shift?</p> <p>3 A. I believe there were some pass -- I</p> <p>4 don't remember who, there were some pass-on notes</p> <p>5 made from supervisor-to-supervisor about the</p> <p>6 condition. I remember the one, specifically, by Sgt.</p> <p>7 Dye, I think.</p> <p>8 Q. Now, I'm directing your attention</p> <p>9 right now to Mary Neill, so when you say she failed</p> <p>10 to follow up, are you saying she didn't write a</p> <p>11 pass-on report at the end of her shift?</p> <p>12 A. No.</p> <p>13 Q. Preparing a pass-on report that</p> <p>14 indicates that an inmate is having alcohol DT's and</p> <p>15 communicating that to the next shift is not ignoring</p> <p>16 the problem; is it?</p> <p>17 A. No.</p> <p>18 Q. In fact, it's taking action; isn't it?</p> <p>19 A. It is taking action on what you know</p> <p>20 at that time.</p> <p>21 Q. Paul Dye -- Well, first of all, were</p> <p>22 you aware that Mary Neill gave medications to this</p> <p>23 inmate, the specific Benzodiazepine or Librium that</p> <p>24 had been prescribed for her by Dr. Stickney?</p> <p>25 A. I don't recall if she administered it</p> <p style="text-align: right;">Page 43</p>	<p>1 interject here which isn't his right, by the way, but</p> <p>2 I'm gonna do this: If Mary Neill hadn't called Dr.</p> <p>3 Stickney, would this inmate have received Librium,</p> <p>4 the drug to counter withdrawal symptoms?</p> <p>5 A. I would assume it would have to be</p> <p>6 prescribed by a doctor.</p> <p>7 Q. And a call had to be made and that was</p> <p>8 done by Mary Neill; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And that's not ignoring the problem;</p> <p>11 that's taking action.</p> <p>12 A. That's taking action, right.</p> <p>13 Q. Once the doctor sets the plan of</p> <p>14 treatment, is it appropriate for the correctional</p> <p>15 officers to follow his orders?</p> <p>16 A. Yes, unless circumstances change.</p> <p>17 Q. Circumstances changed for Paul Dye on</p> <p>18 the evening of the 29th and what did he do about it?</p> <p>19 A. He did call the doctor on the 29th.</p> <p>20 Q. Is that ignoring the condition?</p> <p>21 A. Well, the conditions changed, but they</p> <p>22 also continued to change throughout the evening.</p> <p>23 Q. Answer my question. Is that ignoring</p> <p>24 the problem?</p> <p>25 MR. FINEGOOD: Okay. The objection is</p> <p style="text-align: right;">Page 45</p>

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<p>1 -- The question is vague.</p> <p>2 MR. BODARY: That's a simple question.</p> <p>3 MR. FINEGOOD: You have to give him a</p> <p>4 time element, okay. Obviously, he's</p> <p>5 telling you that situations change over</p> <p>6 time, so why don't you be more specific.</p> <p>7 At 9:18?</p> <p>8 MR. BODARY: I was plenty specific.</p> <p>9 Q. Was just calling the doctor on the</p> <p>10 29th ignoring the condition?</p> <p>11 A. It depends, again, on when it was done</p> <p>12 and what information you had at that point in time,</p> <p>13 how long it went on.</p> <p>14 Q. Are you aware of anything that Sgt.</p> <p>15 Dye did before the call to Dr. Stickney to protect</p> <p>16 this inmate?</p> <p>17 A. I know the staff had moved her to the</p> <p>18 observation cell.</p> <p>19 Q. What staff moved her?</p> <p>20 A. The supervisory staff.</p> <p>21 Q. Yeah. Was that Paul Dye?</p> <p>22 A. I can't recall who --</p> <p>23 Q. You listened to his phone call, didn't</p> <p>24 you, to Dr. Stickney?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 46</p>	<p>1 that to be reactive to what information she saw, but</p> <p>2 yes. The purpose of giving medicine is to prevent</p> <p>3 something, so the doctor was being proactive.</p> <p>4 Q. Well, the correctional officers don't</p> <p>5 know the dosing of Librium; do they?</p> <p>6 A. No, I would assume not.</p> <p>7 Q. In fact, you wouldn't want</p> <p>8 correctional officers including, sergeants to make</p> <p>9 decisions to alter the medications as ordered by the</p> <p>10 doctor; would you?</p> <p>11 A. Of course not.</p> <p>12 Q. Well, Paul Dye then, did Paul Dye</p> <p>13 recognize that this inmate was having withdrawal</p> <p>14 symptoms from alcohol?</p> <p>15 A. If I recall correctly, he was very</p> <p>16 descriptive in what he saw and told the doctor.</p> <p>17 Q. Did he make note of that condition on</p> <p>18 his pass-out report, the first shift that he served?</p> <p>19 A. I believe so, yes --</p> <p>20 Q. And the second shift that he served?</p> <p>21 A. I don't recall the second one.</p> <p>22 MR. FINEGOOD: What date are you</p> <p>23 talking about?</p> <p>24 A. What date you talking about?</p> <p>25 Q. Well, I want you to -- Do you know</p> <p style="text-align: right;">Page 48</p>
<p>1 Q. All right. And in the phone call he</p> <p>2 indicated he moved -- it took three people to do it</p> <p>3 and he moved her?</p> <p>4 A. I don't recall those words, but --</p> <p>5 Q. Assume that he's the one who moved her</p> <p>6 and he moved her to protect her from injuring</p> <p>7 herself, was that ignoring the patient?</p> <p>8 A. No.</p> <p>9 Q. Is that being proactive to protect her</p> <p>10 from injury?</p> <p>11 A. That's being reactive to what he sees.</p> <p>12 Proactive is different than reactive.</p> <p>13 Q. All right. Was Mary Neill's phone</p> <p>14 call to the doctor to get medication proactive?</p> <p>15 A. It was reactive to what she saw.</p> <p>16 Q. What did she see?</p> <p>17 A. She saw an individual when she came in</p> <p>18 that had some issue and history with alcohol, but she</p> <p>19 --</p> <p>20 Q. But -- I'm sorry, go ahead.</p> <p>21 A. She had some concerns.</p> <p>22 Q. All right. So acting on the concern</p> <p>23 and getting medication before obvious signs of</p> <p>24 withdrawal was being proactive; isn't that true?</p> <p>25 A. Again, I would call that and consider</p> <p style="text-align: right;">Page 47</p>	<p>1 what hours that Sgt. Dye worked?</p> <p>2 A. He was in the evening hours --</p> <p>3 Q. Let's assume it's 7:00 p.m., 7:00 p.m.</p> <p>4 to 7:00 in the morning, so the night of the 28th and</p> <p>5 29th, but the night of the 29th to the 30th, I want</p> <p>6 you to assume he worked from 7:00 p.m. until 3:00</p> <p>7 a.m. I'm sorry; that's wrong. He's actually there</p> <p>8 'til 7:00 a.m., on the 29th, but the night of the</p> <p>9 29th to the 30th, he's from 7:00 p.m. to 3:00 a.m.</p> <p>10 Is that the first you've been aware that those were</p> <p>11 his hours?</p> <p>12 A. I did not see any hours schedules or</p> <p>13 staffing.</p> <p>14 Q. Right. So did Paul Dye write a</p> <p>15 pass-on report that referenced alcohol withdrawal or</p> <p>16 DT's for this inmate on each of the shifts as they,</p> <p>17 as they ended and went to a morning shift?</p> <p>18 A. I recall one. I don't remember --</p> <p>19 Q. Well, if he is ignoring the inmate,</p> <p>20 wouldn't it be important whether he wrote and</p> <p>21 communicated to the next shift whether or not he</p> <p>22 believed there were DT's?</p> <p>23 A. I didn't say he was ignoring the</p> <p>24 inmate.</p> <p>25 Q. No. I'm asking. So wouldn't you look</p> <p style="text-align: right;">Page 49</p>

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<p>1 to see if he made the report on each of the ends of 2 the shift? 3 A. I didn't say he was ignoring the 4 inmate and didn't make those particular -- 5 Q. What you said was you saw that he 6 wrote it once. 7 A. What I recall was -- I recall one 8 entry. 9 Q. Are you saying that's the only entry 10 made? 11 A. Again, I can't say that because I 12 don't recall. 13 Q. Are you familiar with incident reports 14 at that jail, what their used for? There's a term, 15 incident report; do you know what it is as it applies 16 to this jail? 17 A. Every jail has a term they call 18 incident or a reporting mechanism of some kind. 19 Q. Some incidences are not medical. 20 There can be safety and security issues within a jail 21 that don't relate to medical conditions; correct? 22 A. Correct. 23 Q. Would you know what the regular 24 process was for printed copies of incident reports, 25 who they go to at the Lenawee County Jail, in 2007?</p> <p style="text-align: right;">Page 50</p>	<p>1 call Dr. Stickney? 2 A. I would assume yes, based upon his 3 description I guess he had concerns about the inmate. 4 Q. Is making a call to Dr. Stickney when 5 he observed the change ignoring the inmate's 6 condition? 7 A. I don't know when he made the call, 8 how long he observed or what time period he observed 9 before he made the call or what happened after he 10 made -- Again, I know he made the call and described 11 her condition. 12 Q. All right. Well, you've never been 13 given a copy of the phone bill from the doctor's 14 office as to when the call was made? 15 A. No. 16 Q. Okay. You listened to Paul Dye's 17 voice in his conversation with Dr. Stickney? 18 A. Yes. 19 Q. And Paul Dye reported, did he not, 20 that the inmate was having bad withdrawal? 21 A. Bad or severe or something, he said. 22 Q. Really bad hallucinations; do you 23 remember that; that she was kind of violent, trying 24 to get out of her cell. 25 A. Yes.</p> <p style="text-align: right;">Page 52</p>
<p>1 A. I know they -- the policy requires 2 them to complete them and be descriptive in what they 3 write and -- I don't remember the whole policy. I 4 remember reading the particular requirements for the 5 documentation of those incidents. 6 Q. You would be aware that Paul Dye made 7 two incident reports related to her medical 8 conditions, Brenda Sue Smith's? 9 A. I recall seeing the computer generated 10 document, I believe. 11 Q. Do you know whether or not that goes 12 to the next sergeant, that report? 13 A. It should be with correctional staff 14 -- 15 Q. And if it was, that's not a procedure 16 that's deliberately indifferent; is it? 17 A. Again, my -- 18 MR. FINEGOOD: Assumes facts not in 19 evidence. 20 A. I'm not familiar with what their 21 system, if it's a computer-based system, whether they 22 print `em out and hand `em out, I'm not aware of 23 those mechanism and I wasn't aware at that time. 24 Q. So is it your understanding that Paul 25 Dye saw a change in this inmate that caused him to</p> <p style="text-align: right;">Page 51</p>	<p>1 Q. That she was very agitated? 2 A. Yes. 3 Q. That she hadn't eaten lunch or dinner? 4 A. Yes -- 5 Q. And that she was banking on the wall? 6 A. Yes. 7 Q. All right. And was that ignoring the 8 condition of the patient -- or the inmate? 9 A. No. Again, that was sharing 10 information with the doctor that he observed. 11 Q. Well, in fact, that's taking 12 corrective action; isn't it? He was talking to the 13 doctor that prescribed the medication. 14 A. That's taking an incident report -- 15 Q. All right. And that's not deliberate 16 indifference? 17 A. Again, my concerns were after the fact 18 of when she started to deteriorate and how she was 19 treated by the staff or ignored by the staff. 20 Q. She had deteriorated according to Sgt. 21 Dye's opinion when he made the phone call; do you 22 understand that? 23 A. Again, I don't know that for a fact. 24 You're saying that, but again, he saw enough to 25 concern him to call the doctor.</p> <p style="text-align: right;">Page 53</p>

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<p>1 Q. Why is it you claim or how can you 2 claim there was some further deterioration? 3 A. Again, based upon what I reviewed and 4 -- 5 Q. Well, what was it that showed you it 6 deteriorated after Dye's conversation? 7 A. There were other descriptives by 8 correction officers, about the behavior of her -- 9 Q. Which correction officer? 10 A. I thought it was Wendy Vanderpool. 11 Q. Okay. And you haven't read the 12 deposition testimony of Nurse -- or Officer 13 Vanderpool? 14 A. No. 15 Q. Are you aware that Vanderpool said 16 there was no real change in the inmate's condition 17 from when Paul Dye called until 3:00 o'clock, when 18 Paul Dye was off? 19 A. I haven't reviewed his deposition. 20 Q. If that's true, then Paul Dye did not 21 fail to act during further deterioration? 22 MR. FINEGOOD: I'm going to place an 23 objection. It assumes facts not in 24 evidence 25 A. And again, based upon the surveillance</p> <p style="text-align: right;">Page 54</p>	<p>1 3:00 o'clock in the morning? 2 A. I can't remember. The video, 3 obviously, was damaged also after -- I didn't view it 4 again. I couldn't view it again. 5 Q. You viewed it the first time? 6 A. Correct. 7 Q. In its entirety, before you prepared 8 your report? 9 A. Yes. That was a while ago, yes. 10 Q. So I'm going to show you that part of 11 the report that started at the bottom of page 2. I'm 12 looking at the very last part of the sentence. The 13 jail records indicate that, "Her condition continued 14 to deteriorate throughout the evening and it was 15 noted that the video observation of the cell ceased 16 at 09 COLON 19 hours, military time; right. Is that 17 what it says? 18 A. Yes. 19 Q. All right. So you, after watching 20 this video, said that the video ceased at 9:19 in the 21 morning? 22 A. There's something where there wasn't 23 video from, like, 9:19 'til 9:50 or something. There 24 was -- 25 Q. You watched the video. Are claiming</p> <p style="text-align: right;">Page 56</p>
<p>1 videos that we also viewed, I believe, of the 2 behaviors in the cell, the individual acting out and 3 the individual doing those kind of activities, to a 4 trained -- I mean to an experienced correctional 5 person, it was deteriorating, I felt. 6 Q. Well, you're not talking about a video 7 that starts at 7:00 o'clock the next morning. The 8 video you're talking about is 7:00 a.m, on the 9 morning of the 30th, but I wasn't asking about that. 10 A. Okay. 11 Q. My question to you was if Wendy 12 Vanderpool, the intake officer closest to that cell, 13 one look contact through the video camera, said that 14 this inmate's condition didn't worsen between the 15 time Paul Dye called and when Paul Dye went off shift 16 at 3:00 o'clock. If that's true, then Paul Dye 17 wasn't deliberately indifferent and didn't ignore 18 this inmate -- 19 MR. FINEGOOD: Object. Assumes facts 20 -- 21 A. Exactly. Again, I only based my 22 opinion upon what I perceived as being the facts at 23 that time. If you change the facts, I reserve the 24 right to change my opinion, yes. 25 Q. Yeah. But you never saw a video from</p> <p style="text-align: right;">Page 55</p>	<p>1 there wasn't an image from 9:19? Let me deal with 2 this first of all. Are you sure that's the case -- 3 MR. FINEGOOD: Objection -- 4 MR. BODARY: I'm going to withdraw the 5 question. I'm withdrawing the question. 6 Q. Are you sure that's the case or did 7 you, looking at the timeline on the death 8 investigation, look at two numbers there, recording 9 events -- 10 A. The times are messed up, yeah. 11 Q. Okay. Let me -- 12 A. It may have been -- 13 Q. All right. Can I see your copy of the 14 -- Do you have the death investigation handy, sir? 15 A. Let me look at the table of contents 16 here. If I can find the page. 17 Q. On page 11, on the Bates stamp of the 18 investigation, noting that on page 10, it started at 19 7:00 o'clock, there are times given here. Do you see 20 that there is an entry, 9:19? 21 MR. FINEGOOD: That's page 12; isn't 22 it? 23 A. The last movement by Brenda -- 24 Q. Yeah. And what's the next entry? 25 A. 9:50.</p> <p style="text-align: right;">Page 57</p>

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<p>1 Q. So you looked at that and thought that 2 the camera hadn't taken images between 9:19 and 9:50; 3 is that what you did, sir? 4 A. There's no entry -- no observation of 5 her noted between 9:19 and 9:50, yeah. 6 Q. So if you look, then, at your report 7 on page 3, in the same paragraph that said the video 8 observation of cell ceased at 9:19, five lines down 9 it says, "The video surveillance was initiated again 10 by jail staff at 9:50 hours." 11 A. I think I had that question and I even 12 discussed with counsel about that particular time 13 frame and, for some reason -- Again, I don't recall 14 exactly -- there wasn't -- 15 Q. There wasn't what? 16 A. There wasn't a video record during 17 that time period. 18 Q. So your memory is that when you looked 19 at the video, there was no image or is it possible 20 you just looked at those two entries and decided that 21 -- 22 A. No. 23 Q. -- it had stopped and been restarted? 24 A. No. For some reason, I believe there 25 was some missing time there, where the machine didn't</p> <p style="text-align: right;">Page 58</p>	<p>1 A. Correct. 2 Q. Because you were of the belief they 3 didn't have the camera on? 4 A. Again, I don't know if the camera was 5 on or not, the recording during that time period. 6 Q. You said the video surveillance was 7 initiated again. 8 A. It may have been a bad choice of 9 words. Again, in my summary, I'm trying to verbalize 10 what my understanding of that was. 11 Q. Right. You understand, don't you, 12 under allegations of deprivation of Civil Rights that 13 each officer is only held responsible for what he 14 knew at the time? 15 A. Correct. 16 Q. There's no collectiveness of officers; 17 and if one officer knows something on day three, it 18 doesn't mean that the next officer knows that same 19 thing during a shift on day four and you have to look 20 at what facts they know; don't you? 21 A. You have to look at the process of 22 sharing information, what the policy requires -- 23 Q. So in Dr. Stickney's conversation with 24 Paul Dye, didn't Dr. Stickney indicate the medication 25 was good?</p> <p style="text-align: right;">Page 60</p>
<p>1 work. 2 Q. So did you think they weren't 3 observing her during that time? 4 A. The video, I said. 5 Q. No. I'm asking you. 6 A. The staff was there. 7 Q. Are you saying that the camera wasn't 8 showing the inmate in that time frame? 9 A. That was my mental note. 10 Q. So when you came to an opinion where 11 someone ignored here, you were of the belief that 12 there was some 31 minutes where there was no camera 13 operating in the cell; is that right? 14 A. Correct. 15 Q. Do you know that you can't turn the 16 camera off in that system? 17 A. Again, I have no knowledge of how the 18 system works. 19 Q. Well, if that's the case, that would 20 be news to you; is that right? If that's the case, 21 that the camera can't be turned off, it operated the 22 whole time, that would be news to you? 23 A. For some reason, I have a mental note 24 that there was some video and we have discussed that. 25 Q. You and the lawyer talked about it?</p> <p style="text-align: right;">Page 59</p>	<p>1 A. I believe he did, yes. 2 Q. That was medication that was 3 prescribed on the 27th, from the call by Mary Neill; 4 correct? 5 A. Correct. 6 Q. So there was no change in medication; 7 correct? 8 A. I don't believe so. 9 Q. All right. Do you understand that one 10 of the risks of alcohol withdrawal can be seizures? 11 A. Yes. 12 Q. This patient was on anti-seizure 13 medicine; did you know that? 14 A. I remember reading something about one 15 of the medications she was on in her chart was 16 anti-seizure medication. 17 Q. Right. So do you understand that 18 Officer Neil and Officer Dye understood she was 19 getting medications, Librium, to counteract her 20 withdrawal and anti-seizure medications to reduce the 21 risk of seizures? 22 A. I don't know what Sgt. Neil and Sgt. 23 Dye knew. You ask a -- 24 Q. Why wouldn't they know what medication 25 she was getting?</p> <p style="text-align: right;">Page 61</p>

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<p>1 A. I can't speak for them.</p> <p>2 Q. Were you assuming they didn't know?</p> <p>3 A. I'm assuming they talked to the doctor</p> <p>4 and that the doctor had told them.</p> <p>5 Q. And don't you remember in the</p> <p>6 conversation that Sgt. Dye told them that she had</p> <p>7 received her anti-seizure medications and the times</p> <p>8 in which she received them?</p> <p>9 A. Again, I don't recall that,</p> <p>10 specifically.</p> <p>11 Q. Isn't that important for you to know</p> <p>12 whether or not Sgt. Dye is ignoring or taking care of</p> <p>13 the inmate?</p> <p>14 A. His actions absolutely would be --</p> <p>15 Q. And his statements; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Now, observe -- Dr. Stickney</p> <p>18 indicated, did he not, in the phone conversation</p> <p>19 that, hopefully, another day will do her good. Do</p> <p>20 you recall that statement?</p> <p>21 A. I recall a statement like that, yes.</p> <p>22 Q. So, in fact, Dr. Stickney, in the</p> <p>23 phone call said the medications were good and that,</p> <p>24 hopefully, another day would do her some good and he</p> <p>25 said to keep her safe and monitor her; is that your</p> <p style="text-align: right;">Page 62</p>	<p>1 MR. FINEGOOD: I object to the form of</p> <p>2 the question. First of all, you're</p> <p>3 assuming that it didn't deteriorate --</p> <p>4 MR. BODARY: I have testimony to that</p> <p>5 effect. This gentleman has offered the</p> <p>6 opinion that he was deliberately</p> <p>7 indifferent because of the deterioration.</p> <p>8 Q. So I'm asking, you've now said, "if,"</p> <p>9 but you can't show me that it did in that time</p> <p>10 interval; can you?</p> <p>11 A. I can only base my opinion about what</p> <p>12 I thought and what I knew at that time.</p> <p>13 Q. All right. And what you were doing is</p> <p>14 you were looking at the video and what she was doing</p> <p>15 in the morning in terms of her activities; is that</p> <p>16 what I understood you to say a few questions ago?</p> <p>17 A. Well, it's a combination of the</p> <p>18 observations and the information from all the parties</p> <p>19 and him being the supervisor, he should have been</p> <p>20 aware of what the person on observation in a</p> <p>21 observation cell was doing.</p> <p>22 Q. He should have been aware, whether or</p> <p>23 not he knows.</p> <p>24 A. He should be aware -- If you put</p> <p>25 somebody in observation, you should be aware of the</p> <p style="text-align: right;">Page 64</p>
<p>1 recollection?</p> <p>2 A. Yes.</p> <p>3 Q. Putting her in a padded cell kept her</p> <p>4 safe from self injury; didn't it?</p> <p>5 A. Putting her in an observation cell</p> <p>6 was, yes.</p> <p>7 Q. Was an appropriate step?</p> <p>8 A. Appropriate step.</p> <p>9 Q. It was not ignoring her; it was taking</p> <p>10 care of her?</p> <p>11 A. Yeah, right.</p> <p>12 Q. So what happened between that phone</p> <p>13 call at 9:14 p.m. and 3:00 o'clock in the morning,</p> <p>14 when Paul Dye left? What other information did he</p> <p>15 have that you claim shows that he was deliberately</p> <p>16 indifferent?</p> <p>17 A. Again, if the situation deteriorated</p> <p>18 --</p> <p>19 Q. If.</p> <p>20 A. If. You gave me a situation and a</p> <p>21 question. If it deteriorated, he has a duty to</p> <p>22 subsequently do something.</p> <p>23 Q. But you're not claiming it did. You</p> <p>24 don't know if it deteriorated between 9:00 p.m. and</p> <p>25 3:00 a.m. in the morning; do you?</p> <p style="text-align: right;">Page 63</p>	<p>1 condition, routinely.</p> <p>2 Q. How many floors to the jail at</p> <p>3 Lenawee? How many floors are there in that jail?</p> <p>4 A. I've never been to Lenawee County</p> <p>5 jail.</p> <p>6 Q. Right. Does the sergeant, Paul Dye,</p> <p>7 have responsibilities on a floor, other than the</p> <p>8 holding floor?</p> <p>9 A. Again, I don't know how many sergeants</p> <p>10 are on duty at that time. I know he was involved</p> <p>11 with this particular inmate.</p> <p>12 Q. And by the way, Hamilton County, how</p> <p>13 many employees do you have there or had there when</p> <p>14 you last worked?</p> <p>15 A. We had approximately 600 employees,</p> <p>16 422 of which were correctional officers.</p> <p>17 Q. Who were the others?</p> <p>18 A. Correctional supervisors, support</p> <p>19 staff, clerical staff, classification staff, data</p> <p>20 entry staff, personnel positions, administration.</p> <p>21 Q. How many correctional officers were</p> <p>22 employed at Lenawee?</p> <p>23 A. I was not given that information.</p> <p>24 Q. How many sergeants?</p> <p>25 A. I was not given that information.</p> <p style="text-align: right;">Page 65</p>

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<p>1 Q. All right. Again, I represent eight 2 people in this litigation. I've taken you through 3 Mary Dye and -- Mary Neill and Paul Dye and assuming 4 that Paul Dye was -- I'm sorry. I've tried to elicit 5 from you your opinions, but now, I want to go to Adam 6 Ondrovick. What was Adam Ondrovick's role in this 7 case?</p> <p>8 A. Again, that particular name, I have 9 not read the deposition, so I'm not --</p> <p>10 Q. Did you read the records to look for 11 the names of the defendants?</p> <p>12 A. Yes. I don't recall.</p> <p>13 Q. So as you sit here and as you prepared 14 your report, you were not thinking that Adam 15 Ondrovick, specifically, Adam Ondrovick, had ignored 16 or not taken care of this inmate?</p> <p>17 A. I don't recall that name; no, sir.</p> <p>18 Q. You don't know what he did or what his 19 job description was at this point?</p> <p>20 A. No.</p> <p>21 Q. At your facility do the intake -- are 22 the intake officers the entry level?</p> <p>23 A. Intake officers are the first officers 24 that the inmate meet when he enters the facility.</p> <p>25 Q. By job description, in your location,</p> <p style="text-align: right;">Page 66</p>	<p>1 tell me what it was that James Craig did that ignored 2 or didn't take care of this inmate.</p> <p>3 MR. FINEGOOD: It assumes facts not in 4 evidence.</p> <p>5 MR. BODARY: You got the objection.</p> <p>6 MR. FINEGOOD: Objection is --</p> <p>7 A. I have no opinion on James Craig that 8 particular night.</p> <p>9 Q. It's different to look at an inmate, 10 who's having withdrawal without knowledge of what the 11 treatment plan is and looking at an inmate who's 12 under treatment; isn't it?</p> <p>13 A. I'm not sure what you're asking.</p> <p>14 Q. If you're a correctional officer and 15 you've been told the medication is good and another 16 day in the jail may do her some good and you see the 17 inmate having withdrawal symptoms, shouldn't the 18 correctional officer follow the directions of the 19 doctor that ordered that?</p> <p>20 A. You have to follow directions, but you 21 also to have services (sic) that change constantly. 22 You can't just stay and follow military order without 23 some discretion. You always have discretion to look 24 at the situation and adjust as it changes.</p> <p>25 Q. Right. But what you're talking about,</p> <p style="text-align: right;">Page 68</p>
<p>1 are intake officers not to have physical contacts 2 with inmates -- physical contact with inmates?</p> <p>3 A. No, just the opposite. They pat 'em 4 down and bring 'em in.</p> <p>5 Q. All right. I want you to assume that 6 James Craig was a sergeant and that James Craig was 7 aware that this inmate was suffering DT's and that 8 the doctor had been spoken to the previous night, 10 9 hours ago and that the medications was to be 10 continued and she was to be observed. What was it 11 that Sgt. Craig did that you claim ignored this 12 patient's condition?</p> <p>13 MR. FINEGOOD: I'm going to place an 14 objection. The question assumes facts not 15 in evidence. There's no evidence that 16 James Craig ever received that information 17 because there was no information in the 18 pass-on book from Eric Westgate to James 19 Craig.</p> <p>20 Q. Now, going back to my question, sir, I 21 want you to assume that James Craig became the 22 sergeant in charge, the officer in charge at 7:00 23 a.m., in the morning, on the 3th and that he was 24 aware the doctor had been called, that this patient 25 was on medication and she was to be observed. You</p> <p style="text-align: right;">Page 67</p>	<p>1 discretion is a judgment call; isn't that correct?</p> <p>2 A. It's a duty to adjust.</p> <p>3 Q. Excuse me. Discretion refers to 4 judgment; it's discretionary. You can do something 5 or you can do something else; correct.</p> <p>6 A. You have to have information to make 7 those judgments, yes.</p> <p>8 Q. But that's what they are? That's what 9 they are is judgments; correct?</p> <p>10 A. Absolutely.</p> <p>11 Q. And so an officer who believes that an 12 inmate has not had food, who writes a written 13 incident report and puts it in the nurse's box for 14 her to see the next day, that's a judgment that he 15 made of the way to communicate that problem to the 16 nurse; correct?</p> <p>17 A. It's a decision he made, yes.</p> <p>18 Q. But it's also discretionary. He could 19 have done something else; he decided to do it that 20 way; correct?</p> <p>21 A. Well, it's discretionary unless the 22 policy requires him to do it. There may have been a 23 policy or procedure that requires him, again, to do 24 that particular function.</p> <p>25 Q. You can't write a policy or protocol</p> <p style="text-align: right;">Page 69</p>

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<p>1 for every event; can you?</p> <p>2 A. No.</p> <p>3 Q. When you reviewed the policies -- Let</p> <p>4 me go back to that issue. But if, in fact, he</p> <p>5 elected to put an incident report in the nurse's box,</p> <p>6 knowing she would see that incident report and the</p> <p>7 inmate, that's a discretionary judgment by that</p> <p>8 officer to communicate in that fashion; correct?</p> <p>9 A. Again, I don't know if it's</p> <p>10 discretionary or if it was required of him to do it</p> <p>11 that way, but he did do it.</p> <p>12 Q. Yeah.</p> <p>13 A. Okay. I know he did it. I can't</p> <p>14 answer the other part 'cause I don't know what the</p> <p>15 requirements are.</p> <p>16 Q. Right. Bernice Baker. Bernice Baker</p> <p>17 is another one of my clients. Do you know what role</p> <p>18 she had in this case?</p> <p>19 A. I knew she was an intake person.</p> <p>20 Q. Um-hum.</p> <p>21 A. The intake officer.</p> <p>22 Q. She was an intake officer. It was her</p> <p>23 first day of employment on April 30th; did you know</p> <p>24 that?</p> <p>25 A. No, I did not.</p> <p style="text-align: right;">Page 70</p>	<p>1 inmate's in a padded cell?</p> <p>2 A. I don't know if it was a padded cell</p> <p>3 or not; it was an observation cell. I don't know if</p> <p>4 it was a padded cell.</p> <p>5 Q. So you didn't know that it was padded?</p> <p>6 A. I didn't know it was padded.</p> <p>7 Q. All right. So you didn't know that</p> <p>8 there was no bunk in the cell or no commode in the</p> <p>9 cell which she could fall or hurt herself on? You</p> <p>10 didn't know --</p> <p>11 A. Well, through the video.</p> <p>12 Q. So you did observe it through the</p> <p>13 video, but you forgot?</p> <p>14 A. Again, the padded issue --</p> <p>15 Q. A person, the first day on the job, as</p> <p>16 an intake officer, who has been told that this is</p> <p>17 someone going through DT's, in a padded cell, would</p> <p>18 not, necessarily, have the knowledge of the</p> <p>19 seriousness of the condition; would they?</p> <p>20 A. Well, if they can put somebody in that</p> <p>21 responsibility, you have an obligation to make sure</p> <p>22 they're trained or what they're looking for and</p> <p>23 what's normal and what's not normal. It's for the</p> <p>24 correctional officers to figure out, the obvious,</p> <p>25 yes, but what is normal and what's not normal and</p> <p style="text-align: right;">Page 72</p>
<p>1 Q. What is it you claim she did that</p> <p>2 ignored this inmate?</p> <p>3 A. Again, I don't recall Bernice Baker</p> <p>4 being in direct observation responsibility for the</p> <p>5 inmate. The processed her into the facility, I</p> <p>6 guess, on her first day --</p> <p>7 Q. I don't want you to guess. I want you</p> <p>8 to assume that Bernice Baker did not work on the day</p> <p>9 she was booked in on the 27th, but Bernice Baker came</p> <p>10 to report the first day of her work at 7:00 o'clock,</p> <p>11 on the 30th of April; that she'd never worked in law</p> <p>12 enforcement or in correctional facilities prior to</p> <p>13 that moment, 7:00 a.m., on April 30th, and that there</p> <p>14 was another intake officer there, already doing the</p> <p>15 duties of an intake officer; all right. You got me</p> <p>16 so far?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And that she was asked to watch the</p> <p>19 screen to see that the inmate didn't hurt herself on</p> <p>20 the video that morning while she was in that holding</p> <p>21 cell. Is that deliberate indifference?</p> <p>22 A. That would be, obviously, unusual or</p> <p>23 obviously dangerous to the inmate. Yes, she needs to</p> <p>24 do something about it.</p> <p>25 Q. She's in a padded cell; correct? The</p> <p style="text-align: right;">Page 71</p>	<p>1 then take action.</p> <p>2 Q. In the first half hour when she's</p> <p>3 there with another person acting as intake officer</p> <p>4 she's supposed to know this; is that your position?</p> <p>5 MR. FINEGOOD: The organization --</p> <p>6 A. I don't know what -- She took the</p> <p>7 responsibility of a corrections officer. I'm not</p> <p>8 sure what they told her her job was, what she's</p> <p>9 supposed to do, but again, if she sees something that</p> <p>10 is not normal or abnormal she should, at least, ask</p> <p>11 the question, pass the information on to somebody.</p> <p>12 Q. How does she know what's abnormal --</p> <p>13 normal or abnormal for someone going through</p> <p>14 withdrawal?</p> <p>15 A. Again, the padded cell. Again, the</p> <p>16 jail put her in that position. I'm assuming they</p> <p>17 would give her some orientation or some training.</p> <p>18 Q. This is before her orientation, so she</p> <p>19 hadn't yet met with the sergeant to talk about</p> <p>20 orientation to the unit. How is she going to know.</p> <p>21 A. Well, again, anything would be obvious</p> <p>22 to a layperson, I think she would need to respond to.</p> <p>23 Someone --</p> <p>24 Q. Well, that's why I asked you the</p> <p>25 question. If it's just a stranger to the</p> <p style="text-align: right;">Page 73</p>

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<p>1 circumstance that looked at it and didn't know this 2 person was on medication, two types of medications 3 and didn't know that the doctor, within 12 hours 4 prior to that had said she's on good medication, just 5 keep her. That's a different circumstance; isn't it, 6 and the correctional officer is there, in the setting 7 in which they've been medically managing this inmate 8 and watching her. Those are different circumstances; 9 aren't they?</p> <p>10 A. Again, you base your opinion based 11 upon the circumstances that exist at that time and 12 whatever she saw, she had an obligation to, at least, 13 observe and make some -- You mentioned discretion 14 before -- make some decision based upon that.</p> <p>15 Q. But she's -- First of all, if Bernice 16 Baker, who had never worked in a health care 17 circumstance or in correctional institutions before 18 did not know what could happen with alcohol 19 withdrawal or what the potential risk of DT's is on 20 the first day of employment, she's not chargeable 21 with ignoring a serious -- a known serious medical 22 condition; is she?</p> <p>23 MR. FINEGOOD: I'm going to object. 24 It assumes facts not in evidence -- 25 A. Again, I'm not sure what she knew,</p> <p style="text-align: right;">Page 74</p>	<p>1 A. Again, I haven't read Mr. Westgate's 2 deposition.</p> <p>3 Q. All right. Well, do you understand 4 that it's important to get the facts right when 5 reviewing the matter because if you get the facts 6 right, your opinions could be wrong -- or if you get 7 the facts wrong, your opinions can be wrong?</p> <p>8 A. Opinions are based upon the facts that 9 you have at the time, absolutely.</p> <p>10 Q. Right. And if you have inaccurate 11 facts, it may cause you to come to an improper 12 conclusion?</p> <p>13 A. Yes, and if the facts and 14 circumstances change and information changes, it can 15 change your opinion.</p> <p>16 Q. All right. I want to show you that on 17 the overview of your case, where you said that in the 18 phone conversation with Sgt. Dye, quote, "Dr. 19 Stickney stated the nurse --</p> <p>20 MR. FINEGOOD: What are we referring 21 to? 22 MR. BODARY: Page 2, Overview of the 23 Case, Exhibit F. 24 MR. FINEGOOD: Okay, hold on. 25 Q. In which you say, QUOTE, Dr. Stickney</p> <p style="text-align: right;">Page 76</p>
<p>1 what she didn't knew (sic), but as a --</p> <p>2 Q. I'm asking you to assume that she did 3 not know.</p> <p>4 A. That the jail administrator put 5 somebody in that position is a mistake.</p> <p>6 Q. What position?</p> <p>7 A. The position to be observing somebody, 8 who may be going through a medical condition or a 9 medical deterioration --</p> <p>10 Q. Are you of the opinion -- I'm sorry. 11 Go ahead.</p> <p>12 A. -- and no direction as to what to do.</p> <p>13 Q. All right. Well, she was told to 14 observe and report what she saw, but you're claiming 15 that even though she hasn't had a minute's 16 orientation at this jail that she could be 17 deliberately indifferent to a known serious medical 18 condition? You're not claiming that; are you?</p> <p>19 A. I'm claiming the fact that she had a 20 duty to say something or describe exactly what they 21 told her to do.</p> <p>22 Q. All right. What is it that Eric 23 Westgate did or didn't do that you claim is 24 deliberate indifference or ignoring the 25 circumstances?</p> <p style="text-align: right;">Page 75</p>	<p>1 stated...the nurse would follow up in the morning 2 PERIOD, END QUOTE. Where'd you get that?</p> <p>3 A. I believe he said, if I remember his 4 conversation about have the nurse -- what was the 5 name -- Bonita, I think it was, Mason or somebody -- 6 follow up.</p> <p>7 Q. He didn't say morning; did he? He 8 didn't say morning; did he?</p> <p>9 A. I believe he said tomorrow.</p> <p>10 Q. Well, tomorrow is not morning; is it?</p> <p>11 A. Well, it could be in the morning. 12 Again, I only got -- I can pull the transcript out, 13 but I don't remember the exact words.</p> <p>14 Q. Well, you have the transcript here. 15 I'm contesting the accuracy of the transcript, but 16 the word, morning, doesn't appear in it, sir. Why 17 did you put morning down there?</p> <p>18 A. That was my interpretation of it when 19 I read it.</p> <p>20 Q. Well, that's unfair if that's not the 21 case; is it? If that's not what he said, follow up 22 in the morning, that's unfair; isn't it, to those 23 that communicated?</p> <p>24 A. I'd be happy to look at that again. 25 Q. All right. And you'd be wrong if it</p> <p style="text-align: right;">Page 77</p>

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<p>1 didn't say morning; correct?</p> <p>2 A. It would not be accurate; correct.</p> <p>3 MR. FINEGOOD: What if he testified in</p> <p>4 his deposition that he seen him in the</p> <p>5 a.m., would that be okay, Jim?</p> <p>6 MR. BODARY: Is there some rule in the</p> <p>7 Federal Rules that I missed somewhere that</p> <p>8 you're allowed to ask me questions and I</p> <p>9 respond because his correction was not</p> <p>10 that.</p> <p>11 Q. But we'll let that -- You asked to see</p> <p>12 the transcript. You asked to see the deposition of</p> <p>13 Dr. Stickney.</p> <p>14 A. I believe I'm going to read all the</p> <p>15 depositions that are available.</p> <p>16 Q. Why am I taking your deposition today,</p> <p>17 under oath, if you've not finished your review?</p> <p>18 MR. FINEGOOD: Stickney's deposition</p> <p>19 has not been transcribed yet.</p> <p>20 MR. BODARY: Excuse me, sir. I'm</p> <p>21 asking this witness --</p> <p>22 Q. First of all, you charge a thousand</p> <p>23 dollars a day for trial; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. And a trial can take the entire day?</p> <p style="text-align: right;">Page 78</p>	<p>1 A. This morning.</p> <p>2 Q. So Mr. Finegood brought them today?</p> <p>3 A. Correct.</p> <p>4 Q. You know your deposition was scheduled</p> <p>5 for other dates. Other dates were discussed for your</p> <p>6 deposition in the month of February.</p> <p>7 A. I remember giving dates I was</p> <p>8 available and I was hoping this was the date.</p> <p>9 MR. FINEGOOD: Just for the record,</p> <p>10 it's clear you scheduled this deposition</p> <p>11 for today's date. It was not rescheduled</p> <p>12 at anybody's --</p> <p>13 MR. BODARY: Actually, that's not</p> <p>14 true. I gave notice and you then contacted</p> <p>15 me, we moved this to March 1st. I may</p> <p>16 stand corrected. I don't want to waste the</p> <p>17 time on this transcript. Let's go, sir.</p> <p>18 Q. You, in page 4 of your report, make</p> <p>19 reference to an ACA standard, a mandatory standard</p> <p>20 and it's the second one quoted here that I'm making</p> <p>21 reference to, "Inmates who need health care beyond</p> <p>22 the resources available in the facility, as</p> <p>23 determined by the responsible physician, are</p> <p>24 transferred --" I'm skipping a few words -- "to a</p> <p>25 facility where such care is on-call or available 24</p> <p style="text-align: right;">Page 80</p>
<p>1 A. Correct.</p> <p>2 Q. You charge \$1200 for depositions,</p> <p>3 regardless of whether they take a full day; is that</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 Q. And you're charging not \$200 an hour,</p> <p>7 like you do for other functions here, but a flat fee</p> <p>8 of \$1200 for the day for depositions --</p> <p>9 A. Correct.</p> <p>10 Q. -- whether it takes three hours,</p> <p>11 three-and-a-half or two hours; correct?</p> <p>12 A. Correct.</p> <p>13 Q. And before you prepared the report in</p> <p>14 this case, you, as you told me, made a careful and</p> <p>15 thorough review to be certain that you got the facts</p> <p>16 correct; is that true?</p> <p>17 A. True.</p> <p>18 Q. And you're telling me that you're not</p> <p>19 finished with your review in this case?</p> <p>20 A. I've gotten additional materials since</p> <p>21 I issued my report. There's a deadline I had to meet</p> <p>22 for counsel and then there's materials that came</p> <p>23 after that that I have not reviewed.</p> <p>24 Q. What day this past week did you get</p> <p>25 these transcripts?</p> <p style="text-align: right;">Page 79</p>	<p>1 hours a day;" do you see that?</p> <p>2 A. Yes sir.</p> <p>3 Q. The responsible physician in this case</p> <p>4 is Jeffrey Stickney; is that correct?</p> <p>5 A. He was the physician for the jail;</p> <p>6 correct.</p> <p>7 Q. Down below, in this same page, you</p> <p>8 refer to an essential standard of the NCCH, and I'm</p> <p>9 looking at the last sentence there, "In deciding the</p> <p>10 level of symptoms that can be managed safely at the</p> <p>11 facility, the responsible physician must take into</p> <p>12 account the level of medical supervision that is</p> <p>13 available at all times."</p> <p>14 A. Correct.</p> <p>15 Q. And that responsible physician is who?</p> <p>16 A. Again it depends.</p> <p>17 Q. In this case, sir.</p> <p>18 A. In the county jail, the jail physician</p> <p>19 doctor is Dr. Stickney.</p> <p>20 Q. If a jail is not accredited by the</p> <p>21 NCCH, and many jails are not, why is it fair to apply</p> <p>22 those standards to that jail?</p> <p>23 A. The NCCHC standards are a set of</p> <p>24 guidelines and standards for the entire corrections</p> <p>25 industry -- You don't have --</p> <p style="text-align: right;">Page 81</p>

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<p>1 Q. Did --</p> <p>2 MR. FINEGOOD: Excuse me. Are you</p> <p>3 going to let him answer?</p> <p>4 MR. BODARY: Sure.</p> <p>5 A. You don't have to be accredited. What</p> <p>6 they are designed to do, ACA and the NCCHC, is you</p> <p>7 get a set of benchmarks for acceptable,</p> <p>8 constitutional corrections operations.</p> <p>9 Q. And far as you know, no state requires</p> <p>10 that it makes those mandatory for any jail inside a</p> <p>11 state?</p> <p>12 A. No, standards have always been</p> <p>13 recommended.</p> <p>14 Q. It's voluntary?</p> <p>15 A. Yes.</p> <p>16 Q. So though the institution uses the</p> <p>17 words, mandatory or essential, in fact, there is</p> <p>18 state requirement that they're mandatory?</p> <p>19 A. Correct.</p> <p>20 Q. Is it your experience that the larger,</p> <p>21 more sophisticated jail systems are accredited by ACA</p> <p>22 or NCCH?</p> <p>23 A. Actually, my experience is it's a lot</p> <p>24 easier for the smaller facility to be accredited than</p> <p>25 the larger ones. The larger ones take a lot more</p> <p style="text-align: right;">Page 82</p>	<p>1 guaranteed to get treatment for bunyons or hang nails</p> <p>2 or minor medical problems; isn't that true?</p> <p>3 A. The Constitutional guarantee is that</p> <p>4 there's adequate medical care and you have to take</p> <p>5 care of the serious medical needs.</p> <p>6 Q. All right, and that's not a serious</p> <p>7 medical need; is it?</p> <p>8 A. What isn't?</p> <p>9 Q. A bunyon or a hang nail.</p> <p>10 A. Again, I'm not a doctor. I can't tell</p> <p>11 what that may be a condition of or a symptom of to</p> <p>12 say if it's serious or not. I'm not a medical</p> <p>13 person.</p> <p>14 Q. All right. Do you know what the</p> <p>15 incidence is of withdrawals going to seizure in a</p> <p>16 patient who's receiving treatment? Do you know what</p> <p>17 the incidence is, what percentage of patients that</p> <p>18 have alcohol withdrawal go to seizure who are,</p> <p>19 actually, treated?</p> <p>20 A. Again, through my training, I heard</p> <p>21 those numbers, but I can't recall exactly what the</p> <p>22 percentage is.</p> <p>23 Q. Do you know what the incidence of</p> <p>24 death is as a complication of untreated alcohol</p> <p>25 withdrawal?</p> <p style="text-align: right;">Page 84</p>
<p>1 effort and a lot more cost because of the volume of</p> <p>2 their operation. The smaller jail is actually easier</p> <p>3 to be accredited by those because there's less to</p> <p>4 accredit.</p> <p>5 Q. Do you know what the budget was for</p> <p>6 health care was at Lenawee County in 2004, 2005,</p> <p>7 2006?</p> <p>8 A. No, sir; I was not given that</p> <p>9 information.</p> <p>10 Q. Yeah. Do you know whether they</p> <p>11 exceeded the budget in giving health care, for</p> <p>12 outside services, obviously, transport out of the --</p> <p>13 treatment outside?</p> <p>14 A. I wouldn't know any of that, sir.</p> <p>15 Q. All right. Did Hamilton County ever</p> <p>16 exceed its budgets by a hundred percent for inmate</p> <p>17 care in any given year?</p> <p>18 A. Not that I recall.</p> <p>19 Q. That's a substantial increase; isn't</p> <p>20 it, over the budgeted item, hundred percent.</p> <p>21 A. The amount of -- The budget has</p> <p>22 nothing to do with the administration of health care</p> <p>23 to inmates.</p> <p>24 Q. So the -- Now, let me understand that.</p> <p>25 First of all, inmates are not Constitutionally</p> <p style="text-align: right;">Page 83</p>	<p>1 A. I know in the corrections environment</p> <p>2 or the corrections industry it's a very real problem</p> <p>3 and I don't know the numbers; I don't know the</p> <p>4 percentage; I can't recall those.</p> <p>5 Q. Do you know the difference when</p> <p>6 treatment occurs?</p> <p>7 A. There's a difference, but I don't know</p> <p>8 what that difference --</p> <p>9 Q. Do you know if it's significant?</p> <p>10 A. Again, I don't know the numbers, so I</p> <p>11 don't know if they were significant or not.</p> <p>12 Q. So you don't know that the serious</p> <p>13 risk of death from withdrawal or DT's is so reduced</p> <p>14 by proper treatment that it's no longer a serious</p> <p>15 risk?</p> <p>16 A. Again, I'm a corrections operations</p> <p>17 person, not a medical person. My job is to make sure</p> <p>18 those people get to the medical positions so they can</p> <p>19 be evaluated -- medical facility.</p> <p>20 Q. In this case, Sgt. Neill, within 16</p> <p>21 minutes of this inmate being booked, got the</p> <p>22 information regarding the patient to a medical</p> <p>23 director; isn't that true?</p> <p>24 A. She called the medical --</p> <p>25 Q. Correct, and he gave the treatment</p> <p style="text-align: right;">Page 85</p>

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<p>1 plan?</p> <p>2 A. At that point, yes.</p> <p>3 Q. He defined the need?</p> <p>4 A. What they knew at that time.</p> <p>5 Q. Yes. And then when Paul Dye thought</p> <p>6 things had changed, he called the doctor again;</p> <p>7 correct?</p> <p>8 A. Didn't he call the doctor on the phone</p> <p>9 --</p> <p>10 Q. And the doctor, again, defined what</p> <p>11 the treatment plan was.</p> <p>12 A. At that point, yes.</p> <p>13 Q. All right. And if correctional</p> <p>14 officers understood the call had been made and the</p> <p>15 treatment was the same, same medication, same</p> <p>16 observation, how were they deliberately indifferent?</p> <p>17 A. Again, you said the same observation;</p> <p>18 the observations had changed from the first call to</p> <p>19 the second call.</p> <p>20 Q. But now, I'm asking you how do you</p> <p>21 know there was any change from the second call? You</p> <p>22 don't really know. All you know is what you saw in</p> <p>23 the video, but you don't know if that was a change;</p> <p>24 do you?</p> <p>25 MR. FINEGOOD: I'm going to object to</p> <p style="text-align: right;">Page 86</p>	<p>1 Q. And not only is it making the</p> <p>2 assumption that there was a deterioration, but the</p> <p>3 same officer saw it was a deterioration; that is,</p> <p>4 that the officer who saw symptoms -- Let's take</p> <p>5 Bernice Baker, when she looks at the video camera at</p> <p>6 7:30 or 8:00 o'clock in the morning, how was she to</p> <p>7 know whether or not that's a change if it's the first</p> <p>8 time she saw this inmate?</p> <p>9 MR. FINEGOOD: Objection to the form</p> <p>10 of the question.</p> <p>11 A. Again, we talked about this before,</p> <p>12 but the obligation of putting her in the role of</p> <p>13 being the observer --</p> <p>14 Q. I'm not asking about the supervisor.</p> <p>15 MR. FINEGOOD: Excuse me. Let him</p> <p>16 answer the question, please; it's common</p> <p>17 courtesy.</p> <p>18 MR. BODARY: It is common courtesy.</p> <p>19 Q. Go ahead.</p> <p>20 A. First, it's the responsibility of the</p> <p>21 appointing authority to make sure they give her the</p> <p>22 information they (sic) need to do that job and what's</p> <p>23 normal and what's not, according to her and record</p> <p>24 that, and also if it's an obvious change in behavior</p> <p>25 that anyone would notice during that time period.</p> <p style="text-align: right;">Page 88</p>
<p>1 the form of the question. You just asked</p> <p>2 five questions in the space of one.</p> <p>3 MR. BODARY: No.</p> <p>4 MR. FINEGOOD: Yes, you did and you're</p> <p>5 arguing with the witness, okay, so why</p> <p>6 don't you ask one question at a time and</p> <p>7 maybe he can answer it.</p> <p>8 Q. I have one question pending to you,</p> <p>9 sir. You don't know if there was a change, you don't</p> <p>10 know if there was a change from the call at 9:00 a.m.</p> <p>11 to what you see on the video in the morning; do you?</p> <p>12 A. 9:00 a.m.?</p> <p>13 Q. 9:00 p.m., when the call was made to</p> <p>14 the doctor, excuse me.</p> <p>15 A. Again, the information I have reviewed</p> <p>16 indicated there was a deterioration of her condition</p> <p>17 overnight.</p> <p>18 Q. Who used the word, deterioration? You</p> <p>19 did --</p> <p>20 A. I did.</p> <p>21 Q. -- in your report. Where is that</p> <p>22 anywhere in this record, deterioration?</p> <p>23 A. That's my analysis.</p> <p>24 Q. Your assumption?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 87</p>	<p>1 Q. Excuse me. I'm asking about Bernice</p> <p>2 Baker, not the person that put her there. How is it</p> <p>3 she knows it's a change. It could have been the same</p> <p>4 condition three or four hours ago; how does she know?</p> <p>5 Can you answer?</p> <p>6 A. At this point, with the information I</p> <p>7 have, no.</p> <p>8 Q. Okay. Well, in fact, you can't record</p> <p>9 a change or act on a change if you don't know it's a</p> <p>10 change; can you?</p> <p>11 A. True. If you don't know it's a change</p> <p>12 --</p> <p>13 Q. You can't ignore a change if you don't</p> <p>14 know it's a change; can you?</p> <p>15 A. Hypothetically, yes, it's true.</p> <p>16 Q. Would you defer to medical experts as</p> <p>17 to whether or not the medications given to this</p> <p>18 inmate were of the proper type?</p> <p>19 A. Yes. I would have no expertise in</p> <p>20 that area.</p> <p>21 Q. And would you also defer to medical</p> <p>22 experts relative to the dosage that was given of this</p> <p>23 particular medication?</p> <p>24 A. Yes, sir; I'm no medical expert.</p> <p>25 MR. FINEGOOD: Wait a second. I</p> <p style="text-align: right;">Page 89</p>

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<p>1 object to the question. The question is 2 vague. Which experts are you talking 3 about, the experts that you've retained, 4 Dr. Stickney or the experts that the 5 plaintiff has retained. There's many 6 experts whose dosaging opinions may be 7 inquired about right now. The question is 8 vague. 9 MR. BODARY: To quote you, you have 10 your objection. 11 Q. Now, sir, on page 8 of your letter or 12 report, you began, I believe, to summarize some of 13 the opinions you reached in the course of this 14 letter. In fact, you put in bold letters at the end, 15 "In this case, Brenda Smith was denied access to 16 adequate medical care at the time it was most 17 critical for (her) treatment (and) life-threatening 18 alcohol withdrawal symptoms;" do you see that? 19 A. Yes, sir. 20 Q. The same sentence starts two 21 paragraphs up with the words, "Brenda Smith was 22 denied adequate medical care after jail officials 23 received actual knowledge of (serious) of her serious 24 medical conditions." 25 MR. FINEGOOD: I'm sorry. You lost</p> <p style="text-align: right;">Page 90</p>	<p>1 Q. I didn't ask about the training. What 2 I asked for is identify which officer didn't 3 recognize the serious condition. 4 A. Again, I'm not aware -- 5 Q. Mary Neill did; she recognized the 6 condition and she made the call; didn't she? 7 A. I said that; correct. 8 Q. Yeah. Paul Dye did. He characterized 9 it as DT's. 10 A. Correct. 11 Q. All right. So in terms of recognition 12 of the condition, the lack of training didn't impede 13 either of them from knowing what this was; correct? 14 A. Again, the deterioration of the 15 condition was the more important element of that. 16 Q. I'm reading your letter that 17 Richardson knew to a moral certainty the need for 18 training the jail staff in the recognition of serious 19 health risks, so you're, apparently, not referring to 20 withdrawal, but a deterioration, overall health -- 21 A. In the corrections industry, it is a 22 absolutely fundamental thing that we do to train our 23 staff in the recognition of serious health risks. 24 Q. Right. Now, here's my question to 25 you: Who was it, which one of these officers, tell</p> <p style="text-align: right;">Page 92</p>
<p>1 me. Where are you -- 2 MR. BODARY: It's in the middle of the 3 third paragraph on the bottom, on page 8. 4 Q. You know what, I don't need to do 5 that. I'm trying to conclude this question, whatever 6 this question is. Let me do it this way: In the 7 paragraph above, you said, starting with the words, 8 "Based on my experience," "Based on my experience, 9 training and education Lenawee County and Sheriff 10 Lawrence Richardson...knew to a moral certainty the 11 need for...training their jail staff in the 12 recognition of serious health risks;" do you see that 13 sentence? 14 A. Yes, I do. 15 Q. Okay. Which correctional officer, of 16 the seven officers I represent, did not recognize 17 this patient's condition as alcohol withdrawal with 18 DT's; which one, sir? 19 A. In the ones I have not reviewed the 20 depositions of I can't answer for. The new person 21 coming in, I really -- she had no training at all at 22 that particular time and this is in the context of 23 training they received. I don't know exactly what 24 they knew, but there is no evidence of training on 25 those topics for any of the staff.</p> <p style="text-align: right;">Page 91</p>	<p>1 me which, Ondrovick, Neill, Paul Dye, Bernice Baker, 2 Eric Westgate, Jim Craig? Which of those people 3 didn't make note or know that this patient was going 4 through DT's? 5 A. Again, the issue is not they didn't 6 know, but -- 7 Q. My question is -- 8 MR. FINEGOOD: Excuse me. Let him 9 answer. 10 MR. BODARY: He's answering the issue. 11 I want an answer to my question. 12 MR. FINEGOOD: No, no. He's answering 13 your question, You may not like it. 14 MR. BODARY: I'll take the response. 15 MR. FINEGOOD: You have to take it, 16 okay? 17 MR. BODARY: I'll take the response. 18 I tried to focus him on the question. 19 MR. FINEGOOD: Well, okay. He doesn't 20 need focusing. 21 A. Again, I think we agreed to the fact 22 that they knew that this lady was having DT's and 23 troubles and the issue I keep talking about concerns 24 as she has deteriorated -- is the word I used -- what 25 was their action at that point.</p> <p style="text-align: right;">Page 93</p>

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<p>1 Q. Well, Paul Dye's action, you 2 understand, was to call Dr. Stickney a second time; 3 correct? 4 A. Correct. 5 Q. And Dr. Stickney made no change; 6 correct? 7 A. Correct. 8 Q. And he said, hopefully another day 9 will do her some good; correct? 10 A. In essence. 11 Q. If there was no further deterioration 12 from that time until the time of her arrest or no 13 determination that was perceivable because the person 14 only saw them (sic) for a limited section of hours, 15 then they didn't fail to recognize a deterioration; 16 did they? 17 A. There was no new evidence, but if 18 there is new evidence, they have to act. 19 Q. Right. And you don't know whether 20 there was because you're just looking at the video as 21 you saw it between 7:00 and 9:00 o'clock or 10:00 22 o'clock? 23 A. And the information the verbal -- how 24 she acted, the description of her behavior by the 25 individual officers that offered medical.</p> <p style="text-align: right;">Page 94</p>	<p>1 adequate medical care and failure to train were 2 issues." Where do you have that? You can't tell me 3 when the suits were filed. 4 MR. FINEGOOD: It's a question -- 5 Okay. It's a compound question -- 6 MR. BODARY: I'll withdraw the last. 7 I'll withdraw the last. 8 Q. Where are you getting, sir? 9 MR. FINEGOOD: Getting what? That 10 they were put on notice by Jail Commander 11 Steenrod's memo? 12 MR. BODARY: Previous lawsuits. 13 Q. They settled previous lawsuits. Where 14 do you get that? 15 A. There is information in the review 16 concerning two other cases -- 17 Q. So plaintiff's lawyer told you about 18 two other cases? 19 A. No. It was something in the 20 discipline of a particular officer, I think it was, 21 Dye. 22 Q. What do you know about those cases? 23 Do you know anything about the Florez case? 24 A. Not a lot, other than the fact that 25 the disciplinary documents that Sgt. Dye was supposed</p> <p style="text-align: right;">Page 96</p>
<p>1 Q. The next sentence says, "They were put 2 on notice by their own Jail Commander and they had 3 settled previous lawsuits where the lack of adequate 4 medical care and failure to train were issues;" is 5 that your statement? 6 A. That's in my letter. 7 Q. So that was your statement, not 8 somebody else's; correct? 9 A. Correct. 10 Q. All right. What other suits had they 11 settled before April 3th of 2007? 12 A. I'm not sure when the suits were 13 settled. 14 Q. You don't know when the suits were 15 filed. 16 A. I don't have the dates of -- 17 Q. So why are you making the statement 18 that they had settled previous lawsuits before April 19 30th of 2007? 20 A. What page are you reading? 21 Q. We're on page 8, sir, the same 22 paragraph where you said, "...knew to a moral 23 certainty...." The very next sentence says, "They 24 were put on notice by their own Jail Commander and 25 they had settled previous lawsuits where the lack of</p> <p style="text-align: right;">Page 95</p>	<p>1 -- 2 Q. But you don't know if there was any 3 deliberate indifference involved in that case? 4 A. The issues dealt with medical care. 5 Q. Answer my question. You don't know -- 6 A. No, I do not, right. 7 Q. Do you know the name of the other 8 case? 9 A. It dealt with -- It was appendicitis 10 or something or -- 11 Q. Do you know when that suit was filed? 12 A. I believe before this suit, but I 13 don't remember. 14 Q. Before April of 2007. 15 A. Again, I don't recall the dates. 16 Q. So why did you put this in this 17 letter, sir? 18 A. When I was drafting this, it was in my 19 particular mind that there was previous lawsuits that 20 I had read about the disciplinary action, concerning 21 -- 22 Q. And you don't know any of the 23 particulars of what the correctional officers did or 24 what interplay there was with any nurse or any doctor 25 in those cases; do you, sir?</p> <p style="text-align: right;">Page 97</p>

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<p>1 A. No, I do not.</p> <p>2 Q. All right. Having NCCH procedures</p> <p>3 does not guarantee there will be no deliberate</p> <p>4 indifference; true?</p> <p>5 A. True.</p> <p>6 Q. All right. If you don't have the</p> <p>7 standards, but the officer's act, by referring</p> <p>8 medical problems to treaters, the absence of the</p> <p>9 standard did not cause any wrong to the inmate; isn't</p> <p>10 that true?</p> <p>11 A. It's not so much the standard; it's</p> <p>12 having policies and directions for your staff.</p> <p>13 Q. I'm asking a specific question now.</p> <p>14 The absence of the particular writing -- The presence</p> <p>15 of the writing doesn't guarantee you won't be</p> <p>16 deliberately indifferent?</p> <p>17 A. True. In terms of the writing, no.</p> <p>18 Q. Present of the standard does not</p> <p>19 guarantee there won't be deliberate indifference;</p> <p>20 does it?</p> <p>21 A. The presence of the standard is --</p> <p>22 Q. It doesn't guarantee there will not be</p> <p>23 deliberate indifference by a correctional officer?</p> <p>24 MR. FINEGOOD: Objection. It's</p> <p>25 irrelevant.</p> <p style="text-align: right;">Page 98</p>	<p>1 here's the thing --</p> <p>2 MR. FINEGOOD: Hold on, I object to</p> <p>3 the form of the question 'cause it's not a</p> <p>4 question. It is a statement and it's vague</p> <p>5 as to which particular guidelines or</p> <p>6 standards you're referring to?</p> <p>7 MR. BODARY: I'm just asking in the</p> <p>8 inverse and he won't acknowledge it.</p> <p>9 Q. The mere presence of the writing</p> <p>10 doesn't guarantee the right procedure, but the right</p> <p>11 procedure in the absence of a particular protocol,</p> <p>12 let's say, of the absence of the protocol will not</p> <p>13 affect that inmate if the procedure avoided</p> <p>14 deliberate indifference; isn't that true?</p> <p>15 MR. FINEGOOD: Objection. It's not</p> <p>16 intelligible.</p> <p>17 A. I didn't hear what you said. All I</p> <p>18 know is that the standards require facilities to have</p> <p>19 policies, procedures that govern the behavior of</p> <p>20 their staff. A jail is a quasi-paramilitary</p> <p>21 operation that needs -- staff needs to know exactly</p> <p>22 what to do, especially when medical staff are not</p> <p>23 there 24 hours a day.</p> <p>24 Q. In the state of Ohio, are these</p> <p>25 standards if you violate them negligently, does that</p> <p style="text-align: right;">Page 100</p>
<p>1 A. I'm not sure what you're -- The</p> <p>2 presence of the standard -- that there actually is a</p> <p>3 standard?</p> <p>4 Q. Yeah. An NCCH standard relative to a</p> <p>5 given issue does not guarantee that an officer is</p> <p>6 going to avoid being deliberately indifferent?</p> <p>7 A. The purpose of the standard is to give</p> <p>8 them guidance to develop policy, procedures and</p> <p>9 training to avoid possible liability, but no, it</p> <p>10 doesn't guarantee anything, no.</p> <p>11 Q. And the absence of the writing will</p> <p>12 not impair someone's Civil Rights if the officers, in</p> <p>13 fact, do procedures that refer serious medical</p> <p>14 conditions for medical evaluation and treatment?</p> <p>15 A. Again, I'm not sure what you're</p> <p>16 asking.</p> <p>17 Q. If there's no deliberate indifference</p> <p>18 by the officer because they refer for medical</p> <p>19 management and follow the doctor's orders, then the</p> <p>20 absence of the standard or the absence of training</p> <p>21 didn't impact the Civil Rights of that inmate; did</p> <p>22 it?</p> <p>23 A. Again, I'm not sure if you're asking a</p> <p>24 question or making a statement.</p> <p>25 Q. I'm asking a question. But, see,</p> <p style="text-align: right;">Page 99</p>	<p>1 give rise to liability in Ohio?</p> <p>2 A. Which standards you talking about?</p> <p>3 Q. NCCH standards.</p> <p>4 MR. FINEGOOD: Excuse me. Calls for a</p> <p>5 legal conclusion.</p> <p>6 A. Again the standards are recommended</p> <p>7 guidelines for rated -- for the guidance of</p> <p>8 departments to develop policies and procedures and</p> <p>9 training so that their staff can again, hopefully,</p> <p>10 avoid liability.</p> <p>11 Q. I'm asking you, do you know whether or</p> <p>12 not the State of Ohio allows a recovery to an inmate</p> <p>13 when there is violation of the standard, not proof of</p> <p>14 deliberate indifference, but violation of the</p> <p>15 standard?</p> <p>16 A. The standard, again, is not law.</p> <p>17 Q. Right. So in Ohio, that doesn't</p> <p>18 count?</p> <p>19 A. That doesn't count in any state</p> <p>20 though, I believe.</p> <p>21 Q. Now, answers to requests to admit by</p> <p>22 the County mistakenly indicated there were no</p> <p>23 protocols on alcohol withdrawal from this</p> <p>24 development, and they're going to be amended. There</p> <p>25 are no written guidelines or policies for</p> <p style="text-align: right;">Page 101</p>

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<p>1 correctional officers, but it develops that Nurse 2 Bonnie Mason and Jeffrey Stickney had protocols for a 3 number of difference types of problems. 4 I want you to assume the following 5 issues: ear infections, migraine headaches, 6 tonsillitis, sinus infection, chest pain, alcohol 7 withdrawal, hypertension, diabetes, seizure 8 disorders. 9 Now, you've offered an opinion in this 10 case that you were shocked or astounded that there 11 were no protocols. In this setup at Lenawee County, 12 where there was part-time nursing coverage, 24-hour 13 physician coverage, the fact that a nursing protocol 14 was known only to the nurse, is that significant? 15 MR. FINEGOOD: Well, first of all, I'm 16 going to place an objection to the extent 17 that any answers to requests to admit are 18 in any way incorrect based on some record 19 that has been developed for the simple 20 reason there are no standards. It's been 21 admitted that if there were standards, 22 there is no -- excuse me -- written 23 documentation. In fact, they've been lost 24 and that will be the subject of a skelation 25 (sic) motion in its own right.</p> <p style="text-align: right;">Page 102</p>	<p>1 call them adequate documents, but some issues were 2 not covered. That means the staff in that kind of 3 facility needed direction on it. 4 Q. So it's what was missing, not that any 5 one of these policies is deliberately indifferent to 6 care? 7 A. Correct. 8 MR. BODARY: That's all the questions 9 I have sir. 10 MR. NELSON: I have a few questions. 11 EXAMINATION 12 BY MR. NELSON: 13 As I mentioned, my name is Dave 14 Nelson. I'm here on behalf of Dr. 15 Stickney. I will try not to repeat the 16 questions that have been asked; I hope not 17 to do that, but if I accidentally go over a 18 few of them already asked, I apologize. 19 Q. All right. You have no formal medical 20 education; correct? 21 A. No, sir. 22 Q. All right. And you -- Do you have any 23 certifications that you had to take courses or take 24 tests to become certified in anything? 25 A. In the field of corrections?</p> <p style="text-align: right;">Page 104</p>
<p>1 MR. BODARY: So what's your objection? 2 MR. FINEGOOD: The objection is it's 3 irrelevant and it's without -- 4 MR. BODARY: This deposition is not 5 necessarily to be read to a jury and I'm 6 going to a point here that I'm inviting 7 problems, and my problem is this: 8 Q. That have you seen other jails in 9 which there are nursing protocols that address 10 nursing issues about how you approach alcohol 11 withdrawal? 12 A. There are, and there should be nursing 13 protocols. In addition to the facility's policies 14 and procedures, directing the authority of the 15 medical staff to do certain things and what the staff 16 does when medical is not there. 17 Q. I want you to point me to which of the 18 listed policies that you reviewed for Lenawee County, 19 and they're listed here under 17a through x. The 20 first two, really, probably don't apply, but whether 21 you think any of these policies, as written, deprive 22 -- were deliberately indifferent to serious medical 23 needs of the inmates. 24 A. Again, the policies, as I remember 25 them, were bare minimum, but yet you could probably</p> <p style="text-align: right;">Page 103</p>	<p>1 Q. Yeah. 2 A. Ironically, I was actually the guy who 3 wrote the curricula for the test for the State of 4 Ohio to become certified as a jail administrator and 5 supervisor, et cetera, so I was the guy that wrote 6 those for the security operations side of the jails 7 in Ohio. 8 Q. Now, I noticed on your C.V., it 9 indicates your a jail operations expert. At least, 10 that's the title you give yourself. Is there any 11 certification in jail operations, like a test you can 12 take to become certified in jail operations? 13 A. There are certifications to the 14 American Jail Association. You can be a certified 15 corrections administrator, I think, and I assisted in 16 developing that program also. I didn't, actually, 17 take the test myself; I wrote the test and also a 18 certified corrections officer, I think, now, but 19 there's nothing in our industry that would make you a 20 certified operations person. 21 Q. Okay. So you're not certified by any 22 of those bodies in corrections or anything? 23 A. There is no certification for that, 24 what you're asking. 25 Q. So the answer is no, that you're not.</p> <p style="text-align: right;">Page 105</p>

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<p>1 I mean if there's no certifications --</p> <p>2 A. Nothing exists, exactly, that -- It's</p> <p>3 unique; it's a unique position.</p> <p>4 Q. Have you written any publications in</p> <p>5 any peer review journals or anything like that</p> <p>6 regarding alcohol withdrawal or DT's?</p> <p>7 A. No, I have not.</p> <p>8 Q. Have you given any presentations to</p> <p>9 any -- well, just given any presentations regarding</p> <p>10 alcohol withdrawal or DT's?</p> <p>11 A. No, I have not.</p> <p>12 Q. Could you describe for me, I guess,</p> <p>13 what your -- the breakup of your professional time is</p> <p>14 today, whether -- give you an example, whether the</p> <p>15 majority of it is testifying or forensic work as an</p> <p>16 expert witness or -- and break that down into the</p> <p>17 percentage of time that you go to facilities and</p> <p>18 investigate them, that's just merely part of your</p> <p>19 work in promulgating standards and things of that</p> <p>20 nature.</p> <p>21 A. My retirement work, you mean. I</p> <p>22 retired back in February, full time, February, 2009,</p> <p>23 full time and since then I started this expert</p> <p>24 witness career as a hobby. I also go to school full</p> <p>25 time now to finish my Master's degree, so I'm a</p> <p style="text-align: right;">Page 106</p>	<p>1 40 depositions, not just those -- I also give</p> <p>2 depositions as my professional responsibility. I was</p> <p>3 the guy that Hamilton County used to represent them</p> <p>4 in litigation or employee litigation or whatever it</p> <p>5 may be, so I've been in -- I'm guessing 40, maybe.</p> <p>6 Q. And that's what you estimate over --</p> <p>7 since 1994, 40 depositions?</p> <p>8 A. Forty, something like that.</p> <p>9 Q. How many times have you testified at</p> <p>10 trial; do you recall since you've been --</p> <p>11 A. I think two of the cases actually made</p> <p>12 it to trial. Ninety-nine percent seem to be settled</p> <p>13 before, which I had nothing to do with, obviously.</p> <p>14 Q. And of the cases that you've acted as</p> <p>15 an expert witness in how many times or what would the</p> <p>16 breakup be between plaintiffs work and defense work?</p> <p>17 A. I just did the math on that. Sixty</p> <p>18 percent of my cases have been defense and 40 percent</p> <p>19 have been plaintiff.</p> <p>20 Q. Have you ever been subject to</p> <p>21 litigation yourself? Have you ever been sued?</p> <p>22 A. No.</p> <p>23 Q. Not ever as a party, dealing with any</p> <p>24 of the issues in Hamilton County? You've never been</p> <p>25 named in a lawsuit?</p> <p style="text-align: right;">Page 108</p>
<p>1 professional student also. And also I teach</p> <p>2 elementary school as part of my education degree and,</p> <p>3 so probably, percentage-wise, this activity takes up</p> <p>4 one-third of what I consider to be my work life at</p> <p>5 this point.</p> <p>6 Q. So boil it down. Since you retired in</p> <p>7 February, 2009, apart from being a student, really,</p> <p>8 the majority of your time is spent as an expert</p> <p>9 witness?</p> <p>10 A. And as a teacher.</p> <p>11 Q. Do you hold any professional licenses</p> <p>12 at all?</p> <p>13 A. No, sir.</p> <p>14 Q. When did you start reviewing cases as</p> <p>15 an expert, what year, if you recall?</p> <p>16 A. I started back in 1994. I was</p> <p>17 requested by an attorney to start and that was my</p> <p>18 first case.</p> <p>19 Q. Since 1994, how many -- on how many</p> <p>20 occasions would you say you've given depositions?</p> <p>21 You can estimate.</p> <p>22 A. Over the last how many years is that,</p> <p>23 16 years or something?</p> <p>24 Q. Yeah.</p> <p>25 A. I'm gonna say I probably been in 30,</p> <p style="text-align: right;">Page 107</p>	<p>1 A. Actually, I believe I was named one</p> <p>2 time in a pro se lawsuit by an inmate many years ago</p> <p>3 because he found my card on the floor of the jail and</p> <p>4 he could spell my name and he, actually, went to</p> <p>5 State prison and passed away before he could file a</p> <p>6 lawsuit because I was noticed of that from the post</p> <p>7 office (sic). And I forget, it was something</p> <p>8 completely out -- It didn't have access to science</p> <p>9 fiction, television or something really off the wall</p> <p>10 type of stuff. I remember that.</p> <p>11 Q. All right. Now, you mentioned</p> <p>12 throughout the course of this deposition that you --</p> <p>13 and you testified you have no formal medical</p> <p>14 education and I'm assuming that you will not be</p> <p>15 rendering any testimony that will be critical of Dr.</p> <p>16 Stickney as to his -- what -- the treatment he</p> <p>17 rendered?</p> <p>18 A. Correct. I'm not a medical expert.</p> <p>19 Q. All right. So you will defer the</p> <p>20 opinions in that regard to a medical expert?</p> <p>21 A. Yes, sir.</p> <p>22 Q. You testified that the NCCH standards</p> <p>23 -- in your terms you called them guidelines and</p> <p>24 standards; correct?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 109</p>

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<p>1 Q. Now, you would agree that a guideline 2 is just that. It's something that can be followed, 3 but it doesn't have to be followed. 4 A. Correct. It's what our industry uses, 5 the corrections industry. 6 Q. Okay. And you also used the term 7 benchmark which is another way of saying guidelines, 8 something that can be followed or it doesn't have to 9 be. It depends on the judgment and the circumstances 10 as to whether or not you use that guideline; correct? 11 A. Correct. 12 Q. All right. Now, you would agree that 13 if there are policies and procedures that are in 14 place regarding the handling of, let's say, alcohol 15 withdrawal or DT's -- Strike that. I'm sorry. If 16 there were no policies in place regarding alcohol 17 withdrawal or DT's, the absence of those policies 18 does not necessarily mean that an untoward result 19 would happen. 20 MR. FINEGOOD: Objection to form. Do 21 you understand the question? 22 Q. If you were to assume that there were 23 no policies or directives in place regarding alcohol 24 withdrawal or DT's, that fact, alone, does not imply 25 that there is any type of deliberate indifference</p> <p style="text-align: right;">Page 110</p>	<p>1 at the Hamilton County correctional facility? 2 A. They would have been in the procedures 3 and policies of the Hamilton County Sheriff's Office 4 -- Correction, Division. 5 Q. But you, yourself, have not published 6 any such protocols or procedures or standards as 7 contained in the NCCH or any of those other 8 guidelines? 9 A. No, sir. 10 Q. Who is, in your county, in Hamilton 11 County, who is the Director of Operations there 12 currently? 13 A. The Sheriff runs the jail. 14 Q. All right. Who is the Deputy 15 Director, if you have one? 16 A. The Chief Deputy is Shaun Donovan. 17 MR. BODARY: How do you spell his -- 18 Spell the last. 19 THE WITNESS: D-O-N-O-V-A-N. 20 MR. BODARY: Thanks. 21 Q. Who is the Medical Director at the 22 Hamilton County Jail? 23 A. I'm not sure since I've been gone. 24 Q. Now, do you have -- Is it just one 25 Medical Director that you have or is there a group of</p> <p style="text-align: right;">Page 112</p>
<p>1 involved? 2 A. No. 3 Q. That's correct, right? 4 A. Correct. 5 Q. And I just want to make sure we 6 covered the bases. As I just stated earlier, you're 7 not going to be testifying as to the appropriate dose 8 of Librium; correct? 9 A. No, sir. 10 Q. And as you have no medical training or 11 experience in that -- experience in treating or 12 diagnosing DT's or alcohol withdrawal since you're 13 not a medical doctor; correct? 14 A. Correct. 15 Q. Have you, yourself, ever created 16 protocols or procedures regarding DT's or alcohol 17 withdrawal? 18 A. I have, in cooperation with my medical 19 staff, created policies for training for the 20 corrections staff in terms of what to do, the actions 21 of the officers, the response of the officers and 22 cooperation with the nursing staff, who report their 23 observations. 24 Q. All right. Now, would those be -- are 25 they published anywhere or just among your own staff</p> <p style="text-align: right;">Page 111</p>	<p>1 physicians that kind of oversee the jail? How is 2 that working? 3 A. When I was there, it was a contract 4 medical service. The contract companies we dealt 5 with were CMS, Correctional Medical Services and also 6 NAF Care. I'm not sure what they have now. 7 Q. So when was the last date that you 8 actually worked or had involvement with the Hamilton 9 County Jail? 10 A. My last day was in February of 2009. 11 I don't know which day it was. I, actually, retired 12 in 2006 and worked two more years at the request of 13 the Sheriff and my last position was to, as I said 14 before, close the jail. So it would have been about 15 February. I'm guessing the end of February, 2009. 16 Q. I think we went over this briefly, but 17 I just want to make sure. In your report, in your 18 criticisms, you note the failure of Lenawee County 19 Jail, Sheriff Lawrence Richardson and jail 20 administration to have a policy, procedure or 21 protocol.... Who would you include in that as all 22 the individual who failed to take that action that 23 you include in that paragraph? 24 MR. FINEGOOD: Where are you reading, 25 what paragraph, please.</p> <p style="text-align: right;">Page 113</p>

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<p>1 MR. NELSON: Page 1, paragraph 1, it's 2 stated on his report that, "The failure of Lenawee 3 County Jail, Sheriff Lawrence Richardson and jail 4 administration have a policy, procedure or protocol 5 to...." What were you referring to when you talked 6 about jail administration? 7 A. Anyone that would have the authority 8 to create policy, procedure for any issue in the 9 administration of the jail and each jail's different, 10 the structure of the jail. 11 Q. All right. And do you know who those 12 individuals would be at Lenawee County Jail? 13 A. The jail administrator. 14 Q. Which is who? 15 A. Mr. Steenrod, I believe, at that point 16 in time. 17 Q. And is that all that you would include 18 under that heading as far as your knowledge goes with 19 regard to Lenawee County Jail? 20 A. There is also the under Sheriff, I 21 believe, is not named here, who had some -- Ms. 22 Dodson, I think. Ms. Dodson, I think her name was at 23 that time. 24 Q. So under the term, jail 25 administration, you'd be referring to the</p> <p style="text-align: right;">Page 114</p>	<p>1 600-plus staff, \$40 million budget and direct 2 responsibility and answering to the Director of 3 Corrections, who was a appointed, political appointee 4 and then to the Sheriff. I was the top operational 5 person who operated the jail and was involved with be 6 it personnel, be it security, training, working with 7 the medical contracts, with food service contracts, 8 doing all the administrative functions that it takes 9 to run an operation that size. 10 Q. And how long did you function in that 11 capacity? 12 A. I started -- Actually, I was the 13 Operations Commander back in 1990. The Deputy 14 Director retired and they didn't replace him; they 15 just gave me both jobs, so I got double-jobbed for 16 the last, about the last 10 years. So I've been 17 doing Deputy Director for probably nine or 10 years, 18 along, along with Operations Commander. 19 Q. I'm sorry. You said 1990? 20 A. 1990 is when I was moved to Operations 21 Commander which was an administrative position in 22 charge of all the security in the operations. And 23 then the Deputy Director retired a few years after 24 that, so they eliminated my position and just gave me 25 both jobs, so I did both jobs --</p> <p style="text-align: right;">Page 116</p>
<p>1 administrator, Dennis Steenrod and Gail Dodson? 2 A. Correct. 3 Q. All right. 4 MR. NELSON: I don't have any further 5 questions. 6 MR. HIMBAUGH: I do not have any 7 questions. 8 MR. FINEGOOD: Well, I have some 9 questions. 10 EXAMINATION 11 BY MR. FINEGOOD: 12 Q. First of all, you've been retired now 13 for, you said most recently, since February of last 14 year; is that correct? 15 A. Correct. I retired, retired. I 16 retired in 2006, but I was asked to stay on. They 17 call it double dipping, I guess, for two years. 18 Q. So what position did you actually 19 retire from? What was your last position? 20 A. The Deputy Director of Corrections. 21 Q. And as Deputy Director of Corrections 22 for Hamilton County, can you just give us a brief 23 overview of what your responsibilities were? 24 A. The Deputy Director was responsible 25 for the operation of four different facilities,</p> <p style="text-align: right;">Page 115</p>	<p>1 Q. So then what do you do -- 2 A. -- the remainder of my career. 3 Q. Close to 20 years? 4 A. Nineteen years or something I was 5 administrative. 6 Q. And how long have you been in law 7 enforcement, if you will, altogether, as a career? 8 A. Since May 22nd, 1980. 9 Q. Thirty years. 10 A. Almost thirty years. 11 Q. And what is your educational 12 background? 13 A. I have a Bachelor of Science in the 14 University of Dayton, graduated 1980, in criminal 15 justice. 16 Q. And you're presently enrolled in a 17 Master's program? 18 A. Yes. I need my thesis and a couple 19 more classes in the spring. I'm getting my Master's 20 in educational administration, at Dayton University, 21 here in Cincinnati. 22 Q. I'm sorry, in business administration? 23 A. Educational administration. 24 Q. Education, okay. So Hamilton County 25 corrections or the Hamilton County Jail, if you will,</p> <p style="text-align: right;">Page 117</p>

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<p>1 how would you characterize that in terms of relative 2 size, perhaps, in comparison to your understanding of 3 Lenawee County. 4 A. It's a large urban corrections system. 5 Lenawee County, obviously, around -- I'm guessing 6 again -- about 300 beds or so, is larger. It's still 7 a full-service jail. They do the same functions. 8 The one thing I've experienced in my career is that 9 it really doesn't matter what the size of the 10 facility is; the operations, the conditions, the 11 responsibilities are the same, just on different 12 magnitudes, you know, but the basic operations and 13 what you need to do is the same. 14 Q. What about relative procedures, if you 15 will, relative to the difference, if any, between, 16 let's say, a jail and a state correctional facility, 17 if you will, or a prison, as it might relate to 18 intake procedures; would there be any? 19 MR. BODARY: Object. Lack of 20 foundation. 21 A. Absolutely. A jail deals with people 22 coming off the street. They could be in any 23 condition, under the influence of anything. While a 24 prison receives people and inmates from jails, so 25 hopefully, everything functions a lot different.</p> <p style="text-align: right;">Page 118</p>	<p>1 characterize the American Correctional Association as 2 something of a paternal organization, something where 3 people get together, like a loyal order of moose or 4 anything like that? 5 A. No, no. It's a professional 6 association of corrections people. Again, the 7 purpose of it is professionalizing this particular 8 industry over the last 20, 30 years. 9 Q. Now, what about a reference was made 10 -- Oh, and I think it looks like from your 11 performance-based standards for adult and local 12 detention facilities, from the American Corrections 13 Association that it was founded in 1870. Is that 14 what that appears? 15 MR. BODARY: The document is a hearsay 16 document. This isn't direct witness 17 testimony. Object, foundation. 18 MR. FINEGOOD: Fine. All right. 19 Q. You made reference to the National 20 Commission on Correctional Health Care Standards and 21 although there was several questions on that subject, 22 I don't know that, so you were asked directly your 23 understanding of what that organization actually is. 24 Can you tell us what that is? 25 A. Again, it's a professional</p> <p style="text-align: right;">Page 120</p>
<p>1 Their function is they take `em in, interview `em and 2 place `em in a security-level facility, but they've 3 already been screened for medical or have been 4 treated for medical and all the other conditions, be 5 it mental health, be it alcohol or drug withdrawal, 6 those are all -- have been taken care of by the jail 7 and when they reach the prison, the intake process is 8 a little bit different. The jail's really are the 9 ones who do all the work of the entry or other parts 10 within the system. 11 Q. Now, you made reference to several 12 organizations anyways. I think one of them was the 13 American Correctional Association? 14 A. Yes, sir. 15 Q. What is the American Correctional 16 Association? 17 A. The American Correctional Association 18 was an organization started many years ago to promote 19 the professionalism of corrections operations. It 20 governs adult prisons, juvenile facilities, community 21 corrections and also detention facilities, and also 22 develops standards based upon committees of 23 attorneys, professionals in the field that will be 24 the benchmarks or the standards for the industry. 25 Q. Is it something -- Would you</p> <p style="text-align: right;">Page 119</p>	<p>1 organization that was designed and developed to 2 professionalize health care delivery inside of jails, 3 prisons, lockups and juvenile institutions. 4 Q. And what are -- Do they publish 5 standards relative to correctional health care and -- 6 for the jails? 7 A. Yes, they do. 8 Q. And you have a copy of them here with 9 you today as one of the publications that you relied 10 upon in the formation of your opinions in this case; 11 is that correct? 12 A. Yes. Those are the documents that 13 would have been in effect during the time frame of 14 the particular incident. 15 Q. Now, can you tell us is it your 16 understanding that the National Commission on 17 Correction and Health Care Standards does have some 18 health care standards as it relates to alcohol 19 withdrawal or delirium tremens? 20 MR. BODARY: That's an inappropriate 21 use of literature, so I'll object on that 22 basis. 23 Q. You can answer. 24 A. Yes. I included some of those in my 25 report.</p> <p style="text-align: right;">Page 121</p>

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<p>1 Q. Okay. Now, I'd like you to assume 2 that Dr. Stickney has testified that he's never heard 3 of the National Commission of Correctional Health 4 Care Standards, although he's been affiliated with 5 the Lenawee County Jail for approximately 10 years as 6 its Medical Director and nor has he ever possessed a 7 copy of any of the correctional and health care 8 standards, published by that organization. What is 9 that -- What relevance would that have to you as 10 someone who is rendering opinions with respect to the 11 Lenawee County Jail health care services as it 12 existed in April of 2007 and as it might related to 13 Brenda Smith, in particular?</p> <p>14 MR. NELSON: Object to form and 15 foundation.</p> <p>16 MR. BODARY: Object.</p> <p>17 A. Again, that's a national set of 18 standards that the corrections industry uses. 19 Anybody who works in this business I'm assuming, 20 would have a knowledge, at least a base knowledge of 21 those particular standards that is the gold standard 22 for corrections and medical care inside of 23 corrections in this country.</p> <p>24 Q. Well, why would it be important to 25 have standards relating to alcohol withdrawal or</p> <p style="text-align: right;">Page 122</p>	<p>1 on-site nursing on the weekends or health-trained 2 correctional officers or custodial staff in a jail 3 setting?</p> <p>4 MR. BODARY: Object as compound, 5 without foundation.</p> <p>6 A. From an operational viewpoint, it's 7 vital to have your staff trained in how to recognize 8 medical emergencies and describe those behaviors to 9 the medical people. Having those medical available 10 is also important some way. To have them on-site is 11 preferable. Obviously, they can actually observe or 12 make decisions that that person can be transported to 13 the medical facility for observation by a medical 14 person.</p> <p>15 Q. Now, with respect to the policies of 16 the Lenawee County Jail as it relates to the role and 17 function of the medical doctor or physician, I'd like 18 to show you what we'll call -- Whatever the next 19 exhibit number is. 20 (Xerographic Document, one page, 21 headed, Policy Number 4.5.1.1, was 22 marked for identification Exhibit K.) 23 And I'm going to show you what we'll mark as Exhibit 24 K and reference 4.5.1.1 and ask you, first of all, 25 does it appear as though it is the description of the physician's duty to develop and supervise emergency</p> <p style="text-align: right;">Page 124</p>
<p>1 delirium tremens in a jail setting anyways?</p> <p>2 MR. BODARY: It's inappropriate use of 3 literature.</p> <p>4 MR. FINEGOOD: The objection is fine.</p> <p>5 Q. Go ahead.</p> <p>6 A. Because jails deal with that issue 7 more than any other type of -- part of criminal 8 justice deal with that issue, probably on a daily 9 basis inside of jails. Small, medium, large doesn't 10 matter, that issue is a prevalent issue for all jails 11 of all sizes and it's becoming more so, not just 12 alcohol, but also drugs.</p> <p>13 Q. Is it common knowledge in the 14 correctional community that inmates can die of 15 alcohol withdrawal or delirium tremens if not 16 assessed and managed appropriately?</p> <p>17 MR. NELSON: Object to foundation.</p> <p>18 MR. BODARY: I'll object to form, too.</p> <p>19 A. Based upon my training and experience, 20 it's a topic that is trained tirelessly inside the 21 corrections administration circles. It's a, what you 22 call a hot topic, I guess, within the industry that 23 we all have been trained and exposed to information 24 on.</p> <p>25 Q. How important is it to have nursing,</p> <p style="text-align: right;">Page 123</p>	<p>1 care protocols used by the jail staff?</p> <p>2 A. Yes, it does say that.</p> <p>3 Q. Okay. And I'd like you to assume that 4 the evidence -- I'd like you to assume that Dr. 5 Stickney has testified that he cannot recall any 6 protocols or standing orders or guidelines of any 7 kind relative to the assessment of risk of alcohol 8 withdrawal or the management of symptoms associated 9 with alcohol withdrawal in the Lenawee County Jail 10 for the 10 years that he's been its Medical Director. 11 Assuming that to be his testimony, do you believe 12 that that is consistent with the policy of the 13 Lenawee County Jail as it might relate to the 14 function of the Medical Director or physician to 15 develop policies with respect to emergencies of 16 inmates?</p> <p>17 MR. NELSON: Object to foundation.</p> <p>18 MR. BODARY: Yeah, I join, foundation 19 and form.</p> <p>20 A. Well, one of his duties is to develop 21 and supervise emergency care protocols used by staff, 22 so I'm assuming that that includes giving them the 23 information they need to do (sic), again, just as the 24 officer, to observe and to defer to get the person to 25 where they need to go medically.</p> <p style="text-align: right;">Page 125</p>

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<p>1 Q. If Dr. Stickney has testified that he 2 did not develop any such policies or procedures 3 because he was working under the assumption that 4 health care -- excuse me -- that correctional 5 officers or the custodial staff had zero medical 6 training and that they wouldn't understand any such 7 guidelines or protocols as it might relate to alcohol 8 withdrawal or delirium tremens, how would that -- how 9 would you view that in terms of an opinion relative 10 to the deliberate indifference to the health care 11 needs of inmates at the Lenawee County Jail? 12 MR. NELSON: Object to form and 13 foundation. 14 MR. BODARY: I'll join. 15 A. Again, first of all, there's no 16 nursing staff. Somebody has to be there to monitor 17 them. The nursing staff does not provide that kind 18 of -- The nursing staff has some role in that to be 19 able to connect that inmate with the health care 20 system. It's an inadequate health care system if 21 there is no connection there that they can get health 22 care. So if there is no protocol, there is no 23 requirement for the officer to do something, even if 24 it is to transport the person to here and there is no 25 nurse on staff to refer -- to do that function, then</p> <p style="text-align: right;">Page 126</p>	<p>1 the behavior and changes in the condition of the 2 individual inmate, then he would have an obligation 3 to do something about that. I don't know, if the 4 doctor gives you a medication -- for example, I can 5 use myself as an example -- that's not working and I 6 deteriorate, I need to go back for further medical 7 evaluation to be safe, because it's his obligation 8 that those changes and deteriorating (sic), as I 9 stated before, then his obligation would be to do 10 something, take some action, some notice to get that 11 person medical care. 12 Q. You indicated that you were aware of 13 what a briefing checklist or a pass-on book was, at 14 least in terms of a general way of conveying 15 information from one shift to another; is that 16 correct? 17 A. Correct. Different jails call it 18 different things, supervisor pass book, pass-on book. 19 It's referred to, but yes, that mechanism. 20 Q. And I'd like you to -- I'd like to 21 show you -- Excuse me. I'd like for you to -- Strike 22 that. 23 Do you recall the substance of the 24 phone call between Paul Dye and Dr. Stickney, at 25 least, as it relates to Dr. Stickney's desire or</p> <p style="text-align: right;">Page 128</p>
<p>1 there's a hole there and, again, the inmate's access 2 to medical care, obviously, would be affected. 3 Q. I'd like you to assume -- Well, strike 4 that. You were aware, based on your review of this 5 case, that Paul Dye called Dr. Stickney, at about 6 9:13, on April -- I mean Sunday night, April 29th, 7 2007, and as he continued his shift until 3:00 a.m., 8 Monday morning, April 30th and that he did advise the 9 physician at that time that Brenda Smith was 10 agitated; that she was hallucinating; that she hadn't 11 had her day or evening meal; that she was calling 12 them names and appeared to be experiencing alcohol 13 withdrawal, would it be your expectation that Paul 14 Dye would do anything else throughout his shift and 15 particularly at the end of his shift with respect to 16 Dr. Stickney, as it might relate to Brenda Smith: 17 calling him back, calling the ER, doing anything 18 based on your understanding of what Brenda Smith's 19 condition was in that period of time. 20 MR. BODARY: Should plaintiff offer 21 this transcript, rather than defendants, 22 the leading form of that question is 23 inappropriate and will be objected to. 24 Q. You can answer. 25 A. Again, if he should notice changes in</p> <p style="text-align: right;">Page 127</p>	<p>1 request in one form or another for Brenda Smith to be 2 seen by the jail nurse, Bonnie, Bonnie Mason on 3 Monday, the following day; do you recall that 4 reference in the telephone conversation between Paul 5 Dye and Dr. Stickney? 6 A. About having Bonnie follow up, Bonnie 7 Mason follow up? 8 Q. Yes. 9 A. Yes. 10 Q. Now, I'd like you to take a look at 11 what was previously marked as Exhibit 3 in the Dotson 12 deposition and I'd like you to assume, first of all 13 that what you're looking at is a briefing checklist 14 from the night platoon of April 29th, 2007, written 15 in the hand of Paul Dye and ask you, first of all, 16 does it appear as though there is any reference to 17 Dr. Stickney's request that Bonnie Mason be seen -- 18 Bonnie Mason see Brenda Smith at all? 19 MR. BODARY: I'm going to object to 20 the lack of form and foundation as it 21 misstates the communication of the phone 22 call. 23 A. There's nothing on here about 24 notifying or having the nurse follow up. 25 Q. It does, indeed, make reference the</p> <p style="text-align: right;">Page 129</p>

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<p>1 fact and I'm, QUOTING, Dr. Stickney was called. END 2 QUOTE; correct? 3 A. Correct. 4 Q. Is there any reference in this note in 5 the pass-on book to suggest what Dr. Stickney said 6 with respect to Brenda Smith or her health condition? 7 A. No. 8 Q. Now, I'd like you to assume that 9 during the night of April 29th throughout the night 10 and morning of April 30th that Brenda Smith's 11 condition was observed by Wendy Vanderpool, as an 12 intake officer stationed directly across or in close 13 proximity to the observation room or cell that Brenda 14 Smith was occupying, and that she generated a note 15 which reflected the activities and actions of Brenda 16 Smith throughout the evening, including and I'm 17 quoting, "that she was trying to get out of the door. 18 She was working hard through the night trying to keep 19 the wall up and getting her family and friends to 20 help her and getting upset because they didn't work 21 as hard as her." And further that, and I'm quoting, 22 "Her friends and family was just outside and wanted 23 to go see them, her being covered in sweat from 24 working so hard," and her missing her -- I'm sorry -- 25 and having her breakfast passed to her, but her</p> <p style="text-align: right;">Page 130</p>	<p>1 behaviors and then based on the training or education 2 refer the individual for some, either medical mental 3 health, at least, observation or assessment. 4 Q. Well, assuming that she was under -- 5 she was engaging in misconduct at 3:00 o'clock in the 6 morning, what would your expectation be with respect 7 to Paul Dye and what he should or should not have 8 done relative to Brenda Smith's health care? 9 MR. BODARY: Objection. Contains an 10 assumption that's not borne out by the 11 facts and assumes knowledge of Paul Dye to 12 those incidents which is not, again, a fact 13 in evidence. Object to foundation. 14 Q. You can answer. 15 A. Based on my experience and training, I 16 would attempt to get this person seen by somebody of 17 the medical -- with medical mental health background 18 just to ensure her safety. I mean those correction 19 officers are not there to treat, but yet to observe 20 behavior and contact and share information with 21 someone that has that expertise could make a 22 qualified assessment. 23 Q. I'd like you to assume that Eric 24 Westgate took over for Paul Dye at 3:00 a.m. on April 25 30th and continued in his role as Jail Shift</p> <p style="text-align: right;">Page 132</p>
<p>1 simply messing with it; that she was down in the 2 middle of the floor and playing quietly with puppies 3 and she had -- she laid head on the edge of the bed 4 and was quiet for the most part." 5 Question to you, Mr. Eiser, is would 6 these be symptoms or -- that would be so obvious to 7 even a layperson that medical, a medical provider 8 would be needed under these circumstances? 9 MR. BODARY: I have to object first 10 because the document in question is 11 hearsay. It may be a party admission as to 12 one individual; it's not an admission as to 13 others. Secondly, you're asking for an 14 opinion here that's not part of his 15 expertise. If he's an expert, he's allowed 16 to make comment. This is an opinion 17 that's, allegedly, for lay individuals and 18 it doesn't include the hypothetical that 19 applies here. This patient was on two 20 medications and being managed by a 21 physician at the time. With those 22 objections, you can take an answer. 23 Q. You can answer the question. 24 A. In my experience, these are behaviors 25 that would lead the correctional to note the</p> <p style="text-align: right;">Page 131</p>	<p>1 Commander `til approximately 8:00 a.m., when Sgt. 2 Craig took over as Shift Commander. I'd like you to 3 assume further that Eric Westgate never put any 4 information in the pass-on book relative to Brenda 5 Smith at all, let along her condition and/or the need 6 for medical follow up. 7 The question to you is of what 8 significance would that be, the failure to put in any 9 information in the pass-on book by Eric Westgate? 10 MR. BODARY: Object to form and 11 stating facts not in evidence and lack of 12 foundation. 13 A. Again, assuming the situation that you 14 describe, the supervisor has an obligation to at 15 least note that information and also document it and 16 then pass it on to those it would be needed to be 17 reviewed by to ensure the continuity of observation, 18 medical care is performed. 19 Q. Your report makes reference to the 20 fact that Parole Officer Thomas Moore interacted with 21 Brenda Smith when he arrived at the jail, at 22 approximately 9:20 a.m., April 30th of 2007. My 23 question to you is, assuming that he was told by an 24 untrained, medically untrained corrections officer 25 and/or intake officer that she was incoherent and out</p> <p style="text-align: right;">Page 133</p>

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<p>1 of it and that he made an observation that she was</p> <p>2 face down in the cell, moaning loudly and that he</p> <p>3 made this observation for a period of time and was</p> <p>4 informed by Wendy Vanderpool that she was in no state</p> <p>5 to be transferred by van anywhere, can you tell me</p> <p>6 what duty, if any, that Parole Officer Thomas Moore</p> <p>7 would have had to Brenda Smith under the conditions</p> <p>8 and facts existing at that time?</p> <p>9 MR. HIMEBAUGH: Object to lack of</p> <p>10 foundation, seeks a legal conclusion.</p> <p>11 Q. You can answer.</p> <p>12 A. I can answer from the point of a jail</p> <p>13 operations person. Ironically, he she was placed in</p> <p>14 there on parole and even when she's in there, the</p> <p>15 parole department will -- but if anybody in the</p> <p>16 criminal justice system, an officer, sees something</p> <p>17 like that, I would expect them, at least, to share</p> <p>18 that information with a person in supervision, that</p> <p>19 they saw that just to make sure before they left that</p> <p>20 -- My expectation would be that they would share that</p> <p>21 information with somebody in supervision just to</p> <p>22 ensure, again, the continuity of medical care was</p> <p>23 being noticed.</p> <p>24 Q. And by supervision, are you referring</p> <p>25 to jail supervision?</p> <p style="text-align: right;">Page 134</p>	<p>1 when you see something like that, you take, at least,</p> <p>2 some action, go and notify and make sure the</p> <p>3 situation is under control then you can tend to the</p> <p>4 situation. I think in this context, the parole</p> <p>5 officer, like I stated before, being an officer in</p> <p>6 criminal justice has some responsibility, at least,</p> <p>7 to ensure that the individual is getting proper</p> <p>8 medical care based upon what he saw.</p> <p>9 Q. Does it appear as though the DOC</p> <p>10 policy that you're -- that's referenced here is in</p> <p>11 any way consistent or otherwise to the standards set</p> <p>12 forth in the adult local detention facilities,</p> <p>13 promulgated by the American Corrections Association,</p> <p>14 in particular 4d-24 as it relates to correctional and</p> <p>15 health care personnel, relating to emergency medical</p> <p>16 situations?</p> <p>17 A. Are you talking about the same format</p> <p>18 and response time, so I'm assuming that it was</p> <p>19 modeled after the American Corrections Association</p> <p>20 standards. In fact, the NCH standards are listed</p> <p>21 right above, in the box, so I'm not sure if they're</p> <p>22 basing those on those things.</p> <p>23 Q. You said earlier it was ironic that</p> <p>24 she was held on a -- her status at the Lenawee County</p> <p>25 Jail was one as a parole violator, if you will. What</p> <p style="text-align: right;">Page 136</p>
<p>1 A. At this point, yes.</p> <p>2 Q. Now, with respect to jail -- Well,</p> <p>3 strike that. I'd like to show you a document</p> <p>4 previously marked as Deposition Exhibit 6, from</p> <p>5 Steenrod and indicate for the record that those are</p> <p>6 policies of the Michigan Department of Corrections as</p> <p>7 it relates to medical emergencies and the need to</p> <p>8 respond to emergencies within a window of time. I</p> <p>9 think it's referencing within four minutes.</p> <p>10 My question to you is, first of all,</p> <p>11 would those Michigan Department of Corrections</p> <p>12 policies have relevance in this case as it may relate</p> <p>13 to the parole officer's duties as it relates to</p> <p>14 medical emergencies and his observations of them</p> <p>15 relative to a parole detainee in the county jail, as</p> <p>16 opposed to the prison system.</p> <p>17 MR. HIMEBAUGH: Objection, foundation</p> <p>18 because he doesn't know the interaction</p> <p>19 between him and those in the jail.</p> <p>20 Q. Again, I am not an expert and</p> <p>21 knowledgeable about how the Michigan Department of</p> <p>22 Corrections works. This policy states -- The policy,</p> <p>23 itself, talks about an -- the standard that I alluded</p> <p>24 to about response time. Generally, their expectation</p> <p>25 is for officers in any criminal justice agency that</p> <p style="text-align: right;">Page 135</p>	<p>1 did you mean by that?</p> <p>2 A. Well, it's different in every state,</p> <p>3 but in Ohio, the State Parole inmates are technically</p> <p>4 State prisoners and I'm not sure what the setup is in</p> <p>5 the state of Michigan in terms of that, whether they</p> <p>6 actually a state prisoner which the State would then</p> <p>7 have to pay for housing, so there's some obligation</p> <p>8 to pay for and supervise and be accountable for that</p> <p>9 inmate.</p> <p>10 Q. Now, as far as the Lenawee County is</p> <p>11 concerned, you were aware that Dennis Steenrod, Jail</p> <p>12 Commander, had authored a memo in April -- on April</p> <p>13 2nd of 2007, addressing the health care services of</p> <p>14 the Lenawee County Jail and concluding that health</p> <p>15 care provided to inmates was, indeed, inadequate; you</p> <p>16 were aware of that fact?</p> <p>17 A. Yes, I read that.</p> <p>18 MR. BODARY: Object to the form of the</p> <p>19 question.</p> <p>20 Q. Well, would the fact that Jail</p> <p>21 Commander Steenrod had authored such a memo on April</p> <p>22 7, 2007, establish the county and their Sheriff's</p> <p>23 knowledge of the inadequacies of the jail health care</p> <p>24 at the Lenawee County Jail?</p> <p>25 MR. BODARY: Object. Lack of</p> <p style="text-align: right;">Page 137</p>


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<p>1 foundation.</p> <p>2 A. As a former jail administrator, he's</p> <p>3 probably the best person to be in a position to</p> <p>4 notify the Sheriff of the condition of the medical</p> <p>5 care given to the inmates of his jail, but yes, he'd</p> <p>6 be the best person to do that and he did that.</p> <p>7 Q. What about the fact that the jail did</p> <p>8 nothing to address -- to make any immediate changes</p> <p>9 with respect to the inadequacies outlined by</p> <p>10 Administrator Steenrod for a period of over -- well</p> <p>11 up to 60 days when the new health care provider took</p> <p>12 effect on June 1st, 2007?</p> <p>13 MR. BODARY: Obviously -- I'm sorry.</p> <p>14 Go ahead.</p> <p>15 Q. What is your opinion in that regard?</p> <p>16 MR. BODARY: That's a broad question,</p> <p>17 not limited to his expertise, not relevant</p> <p>18 to the communication that pertains --</p> <p>19 misrepresents the facts.</p> <p>20 Q. Go ahead. You can answer.</p> <p>21 A. They did take the action, I guess,</p> <p>22 pursuing a medical contract, but that doesn't help</p> <p>23 the inmates if they come in the next day and the day</p> <p>24 after and the day after within a 60-day period, so</p> <p>25 again, my recommendation, my opinion would be the</p> <p style="text-align: right;">Page 138</p>	<p>1 staffing expenses?</p> <p>2 A. Yes, sir.</p> <p>3 Q. If the inadequacy is nursing hours and</p> <p>4 the means of correcting the number of nursing hours</p> <p>5 is a contract with an independent health contractor,</p> <p>6 like you had in Hamilton County, it requires action</p> <p>7 of the Board of Commissioners to do that; doesn't it?</p> <p>8 A. Again, I'm not sure of the policies of</p> <p>9 the jurisdiction. In our case, alluding to my</p> <p>10 facility, we would take immediate action and again,</p> <p>11 the contract, itself, is important as to what you can</p> <p>12 and cannot do, so the knowledge of the contract you</p> <p>13 have with that particular agency -- If you have no</p> <p>14 contract at that point, some step needs to be taken.</p> <p>15 Q. If you have a contract?</p> <p>16 A. If you have a contract, then you look</p> <p>17 in the contract and see what has -- the remedies</p> <p>18 within the contract are not immediately step outside</p> <p>19 the contract and approach immediately for solutions.</p> <p>20 Q. And it takes some time; does it not,</p> <p>21 for a new contracting entity to set up its -- for an</p> <p>22 entity to go into a jail? Do you know what the lag</p> <p>23 time is for when you talk and negotiate with these</p> <p>24 contractors as to when they go into the jail?</p> <p>25 MR. FINEGOOD: Objection to the form</p> <p style="text-align: right;">Page 140</p>
<p>1 specifics that led to Mr. Steenrod saying that the</p> <p>2 data that was published at its base needs to be</p> <p>3 analyzed immediately and then an action needs to be</p> <p>4 developed right away to be able to address those</p> <p>5 specific inadequacies and not just to say it, but</p> <p>6 once you analyze it and you have the data which I'm</p> <p>7 assuming he did by making those statements, then a</p> <p>8 procedure should have been addressed at that point by</p> <p>9 the administration and the Sheriff to address those</p> <p>10 inadequacies, not waiting 60 days, but immediately.</p> <p>11 MR. FINEGOOD: All right. I have no</p> <p>12 further questions. Thank you.</p> <p>13 RE-EXAMINATION</p> <p>14 BY MR. BODARY:</p> <p>15 Q. Mr. Eiser, based on the report that</p> <p>16 you prepared, marked Exhibit F in your testimony</p> <p>17 today, have you told us all the criticisms you expect</p> <p>18 to offer at the time of trial?</p> <p>19 A. Yes, sir.</p> <p>20 Q. You don't expect to add anything new?</p> <p>21 A. Unless, again, addition information is</p> <p>22 -- but I don't expect to, no.</p> <p>23 Q. And if the inadequacy -- First of all,</p> <p>24 a jail, county jails often -- and it has to respond</p> <p>25 to a Board of Commissioners relative to staffing and</p> <p style="text-align: right;">Page 139</p>	<p>1 of the question. Go ahead.</p> <p>2 A. As an operational person, yes, I know</p> <p>3 about the time, but it does not -- the lack of funds</p> <p>4 and the lack of money never, ever will compromise the</p> <p>5 medical care you can give to inmates, but if you know</p> <p>6 a problem, you need to deal with it immediately.</p> <p>7 Q. If the problem is as perceived that</p> <p>8 more nursing time could be acquired for the same or a</p> <p>9 little more money, but it requires action of the</p> <p>10 Board of Commissioners, not an independent act.</p> <p>11 Well, first of all, let me do this: You said what</p> <p>12 you would do in Ohio. You don't know what the</p> <p>13 processes are in Lenawee County; do you?</p> <p>14 A. I just alluded to that. I don't know</p> <p>15 what your commissioner process is.</p> <p>16 Q. Right.</p> <p>17 A. I'm not aware of that.</p> <p>18 Q. So you don't know what the Sheriff</p> <p>19 could have done besides signing the contract in order</p> <p>20 to increase the number of nursing hours at the jail;</p> <p>21 do you?</p> <p>22 A. Well, nursing was one of many of the</p> <p>23 different issues --</p> <p>24 Q. So my question as to nursing, you</p> <p>25 don't know what he had to do?</p> <p style="text-align: right;">Page 141</p>

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<p>1 A. I have no knowledge of that; right.</p> <p>2 Q. And you don't know what he had to do</p> <p>3 in order to get an X-ray machine in there; do you?</p> <p>4 MR. FINEGOOD: Objection. Irrelevant.</p> <p>5 A. I'm not aware --</p> <p>6 Q. In Lenawee County.</p> <p>7 A. -- of Lenawee County procedures; no,</p> <p>8 sir.</p> <p>9 Q. You don't know what he had to do in</p> <p>10 order to get a physician's presence, physical</p> <p>11 presence within the jail? You don't know what the</p> <p>12 process would have been; do you?</p> <p>13 A. If you're talking monetarily, that</p> <p>14 process, no. A phone call sometimes will solve these</p> <p>15 things in my experience.</p> <p>16 Q. Well, you have no experience in</p> <p>17 Lenawee County?</p> <p>18 A. I said my experience.</p> <p>19 Q. That's Ohio. I asked you about</p> <p>20 Lenawee. So you don't know what could be done; do</p> <p>21 you?</p> <p>22 A. Not exactly, no.</p> <p>23 MR. BODARY: I have nothing further.</p> <p>24 MR. NELSON: I just have a few</p> <p>25 follow-up questions.</p> <p style="text-align: right;">Page 142</p>	<p>1 inappropriate to question him on it.</p> <p>2 MR. NELSON: Just as inappropriate to</p> <p>3 question him about a deposition transcript</p> <p>4 he hasn't read, but anyway, assuming that</p> <p>5 there were policies in place with Bonnie</p> <p>6 Mason, that would satisfy any obligation he</p> <p>7 may have had under a contract; would it</p> <p>8 not?</p> <p>9 MR. FINEGOOD: Question is vague.</p> <p>10 A. Again, I don't know exactly what</p> <p>11 you're asking. In terms of protocols and policy, to</p> <p>12 my understanding did not exist, but yes, if they did</p> <p>13 exist, you had to look at 'em and see if they were</p> <p>14 adequate for what they're intended to do.</p> <p>15 Q. All right. But the fact remains that</p> <p>16 if a protocol or a procedure, even if it is somewhat</p> <p>17 vague or it doesn't necessarily dictate, you know,</p> <p>18 what procedure is to be carried out, that does not,</p> <p>19 by itself, rise to deliberate indifference; does it?</p> <p>20 A. Say that again.</p> <p>21 Q. If there is not a procedure in place,</p> <p>22 that would not rise to the level of deliberate</p> <p>23 indifference?</p> <p>24 MR. FINEGOOD: Well, the question is</p> <p>25 vague. What procedure are you referring</p> <p style="text-align: right;">Page 144</p>
<p>1 RE-EXAMINATION</p> <p>2 BY MR. NELSON:</p> <p>3 Q. Mr. Finegood indicated that Dr.</p> <p>4 Stickney testified in his deposition that he never</p> <p>5 heard of the NCCH. Now, you testified earlier you've</p> <p>6 never read Dr. Stickney's transcript; correct?</p> <p>7 MR. FINEGOOD: No, he hasn't. It</p> <p>8 hasn't been transcribed yet.</p> <p>9 Q. But you haven't read it?</p> <p>10 A. Right.</p> <p>11 Q. Even assuming, hypothetically, that</p> <p>12 was said, not knowing who the NCCH is, does not, by</p> <p>13 itself, rise to a deliberate indifference; does it?</p> <p>14 A. No.</p> <p>15 Q. All right. He also indicated that by</p> <p>16 showing you an exhibit that there was -- that Dr.</p> <p>17 Stigney was under contract and had a duty to</p> <p>18 establish protocols and procedures and things of that</p> <p>19 nature. If there was a procedure in place with</p> <p>20 Bonnie Mason, regarding alcohol withdrawal or DT's,</p> <p>21 that would not -- that would be appropriate; would it</p> <p>22 not?</p> <p>23 MR. FINEGOOD: Objection. Objection.</p> <p>24 It assumes facts not in evidence. There is</p> <p>25 no -- There's no documentation and it's</p> <p style="text-align: right;">Page 143</p>	<p>1 to?</p> <p>2 A. It's a life threatening -- Depends on</p> <p>3 the issue of the reason for the procedure.</p> <p>4 Q. Okay. It depends on the issues and</p> <p>5 the facts and circumstances that are involved in</p> <p>6 every case?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And a procedure does not</p> <p>9 or a protocol does not have to be written to be a</p> <p>10 procedure or protocol; does it?</p> <p>11 A. Again, in this industry, there are,</p> <p>12 I'm sure, unwritten procedures. Recommendations in</p> <p>13 the National standards is that they're written. It's</p> <p>14 been that way for decades.</p> <p>15 Q. But the fact that a procedure is in</p> <p>16 place or a protocol is in place that is not written,</p> <p>17 as long as it, in some way, refers to health care of</p> <p>18 inmates or something like that, that would be</p> <p>19 appropriate and it wouldn't be deliberately</p> <p>20 indifferent.</p> <p>21 A. I would never say appropriate because</p> <p>22 I think it needs to be written and documented so that</p> <p>23 those people, I could die tomorrow and the guy's</p> <p>24 going to take over. You need to have that continuity</p> <p>25 of information. So, again, that's something that the</p> <p style="text-align: right;">Page 145</p>

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<p>1 professionalism of corrections has tried to 2 eliminate, unwritten protocols. 3 Q. So it's a recommendation, but as you 4 stated, there's recommendations and -- 5 A. Standards. 6 Q. -- it's a judgment call as to whether 7 you follow that recommendation or not. 8 A. It's a standard in the industry. 9 Q. And as I stated, a standard is a 10 benchmark or a guideline, not a mandatory dictate? 11 A. Correct. 12 MR. NELSON: I have nothing further. 13 EXAMINATION 14 BY MR. HIMEBAUGH: 15 Q. I forget, did you review the 16 deposition of Dennis Steenrod and Tom Moore? 17 A. I have them. I have not read them 18 yet. I got those today. 19 Q. Okay. You just received those for the 20 first time today? 21 A. Yes, sir. 22 MR. HIMEBAUGH: That's all I have. 23 RE-EXAMINATION 24 MR. FINEGOOD: 25 Q. Would you expect to take a resolution</p> <p style="text-align: right;">Page 146</p>	<p>1 available on weekends at the Lenawee County Jail? 2 MR. BODARY: There's no foundation for 3 his response. He hasn't read depositions. 4 He's only seen the records of this 5 incarceration. That question lacks 6 foundation. 7 Q. You can answer. 8 A. Based on what I have reviewed, I see 9 no action. 10 Q. Okay. 11 MR. FINEGOOD: I have nothing further. 12 - - - 13 (At 2:15 o'clock, PM, the deposition was concluded.) 14 - - - 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 148</p>
<p>1 of the Board of Commissioners of a county to change 2 the hours of a part-time nurse from three days a week 3 for 18.5 hours to taking some portion of that to 4 perform her duties on weekends? 5 MR. BODARY: Lack of foundation. He 6 doesn't know on weekends. 7 A. Any situation that came up in my 8 experience that was either life threatening or vital 9 to the operation of the jail, we have a mechanism in 10 Ohio that you go to the County Administrator, who 11 works for the Board of County Commissioners, tell him 12 about that situation and get an immediate audience 13 with the Commissioner or Commissioners, who can make 14 a decision -- But again, it gives some leeway and 15 most counties and governments have that leeway in 16 emergencies to have some type of mechanism in place 17 to have that available to their department heads. 18 Q. From your review of the documents and 19 record in this particular case, did it appear as 20 though there was any actions on the part of the jail, 21 if you will, the Sheriff, the under-Sheriff and or 22 the Jail Commander to immediately rectify the fact 23 that there is no on-site nursing available on the 24 weekends or for that matter, qualified train -- 25 excuse me -- health-trained corrections officers</p> <p style="text-align: right;">Page 147</p>	<p>1 CERTIFICATE 2 STATE OF OHIO) 3) SS: 4 COUNTY OF HAMILTON) 5 I, Edna M. Hawkins, the undersigned, a duly 6 qualified and commissioned Notary Public within and 7 for the State of Ohio, do hereby certify that before 8 the giving of his aforesaid deposition the said JEFF 9 EISER was sworn to depose the truth, the whole truth 10 and nothing but the truth; that the foregoing is the 11 deposition given at said time and place by the said 12 JEFF EISER; that said deposition was taken in all 13 respects pursuant to agreement and stipulations of 14 counsel hereinbefore set forth; that said deposition 15 was taken by me; that the transcribed deposition was 16 not submitted to the witness for his examination and 17 signature; that I am neither a relative of nor 18 attorney for any of the parties to this cause, nor 19 relative of nor employee of any of their counsel and 20 have no interest whatever in the result of the 21 action. 22 IN WITNESS WHEREOF, I have hereunto set my hand 23 at Cincinnati, Ohio, this 15th day of May, 2010. 24 25</p> <p style="text-align: center;">  <u>Edna M. Hawkins</u> My Commission Expires: September 17, 2012 Notary Public - State of Ohio </p> <p style="text-align: right;">Page 149</p>

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